Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1995

STEVEN R. ZIELINSKI and JERROLD H. STOCKS,

Petitioners,

v.

RICHARD SCHMALBECK, GERARD V. BRADLEY, JEANNE E. GALVIN, and ROBERT BARRY,

Respondents.

On Petition for a Writ of *Certiorari*
to the Appellate Court of Illinois
for the Fourth District

PETITION FOR A WRIT OF *CERTIORARI*

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Dated: July 9, 1996

QUESTIONS PRESENTED

1. May a State court grant absolute immunity from actions under 42 U.S.C. § 1983 without first undertaking the functional analysis and historical analysis required by this Court, including a determination as to whether or not such immunity existed in 1871?

2. May a State court establish an immunity from actions under 42 U.S.C. § 1983 in the interests of what it judges to be sound public policy?

3. When the law school dean, other members of the faculty of a State university, and another, intending to frustrate the application of the State university's student for admission to the bar and to impair his prospects of future education and employment, falsely allege to bar examiners that the student has committed acts of sexual and other misconduct, have they deprived the student of rights guaranteed to him by the United States Constitution in a manner actionable under 42 U.S.C. § 1983?

4. Does the United States Constitution prohibit State courts from imposing sanctions against a plaintiff and his attorney for bringing suit seeking redress under 42 U.S.C. § 1983, for wrongful communications of false information by State officials intending to frustrate the plaintiff's application for admission to the bar?

PARTIES TO THE PROCEEDING

The names of all parties to the proceedings below appear in the caption of the case.

TABLE OF CONTENTS

Page

Questions Presented i

Parties to the Proceedings ii

Table of Contents iii

Table of Authorities vii

Introduction 1

Opinion Below 1

Jurisdiction 2

Constitutional Provisions, Statutes, and Rules Involved . . 2

Statement of the Case 7

Summary 7

Dr. Zielinski's Background and Legal Studies . . 8

Dr. Zielinski's Business Quarrel with Respondents Bradley and Barry 9

Respondent Galvin's Charge of Sexual Misconduct by Dr. Zielinski 10

Dr. Zielinski's Application for Admission to the Bar 11

Page

The State's Continuing Injury to Dr. Zielinski . . 14

Proceedings Below 14

Reasons for Granting the Writ 16

I. This Case Presents this Court with a Compelling Opportunity to Protect the Supremacy of the United States Constitution and Federal Law Against the Confection by States of Immunities From Them 16

A. The Decision Below Subordinates Federally-Guaranteed Rights to a State-Devised Privilege 16

B. In Devising a New Absolute Immunity from Liability under 42 U.S.C. § 1983, the State Courts Failed to Undertake the Functional and Historical Analysis Required by this Court 18

C. The State Courts Indulged in Judicial Policy-Making that Is Improvident and Impermissible . . 25

II. This Court's Intervention Is Necessary and Warranted to Secure Constitutional Safeguards Against Arbitrary and Oppressive State Action and to Vindicate the Federal Power 27

Page

A. Liberty and Property Interests Relating to Reputation and Livelihood Are Not Trivial. That Admission to the Practice of Law Is a Privilege Does Not Justify a State's Arbitrary Abridgment of Those Rights 28

B. In Penalizing Dr. Zielinski and Mr. Stocks, His Attorney, for Asserting Dr. Zielinski's Claims Under Section 1983, the State Courts Seek to Chill Challenges to State-Adopted Immunities. The Federal Supremacy Interests Involved Warrant Review by This Court . . 29

Conclusion 33

Appendix 1a

Order of the Supreme Court of Illinois denying leave to appeal (June 1, 1995) 1a

Opinion of the Appellate Court of Illinois for the Fourth District (February 17, 1995) 2a

Memorandum of Decision of the Circuit Court for the Sixth Judicial Circuit of Illinois (December 22, 1993) 38a

Page

Order of the Circuit Court for the Sixth Judicial Circuit of Illinois (March 10, 1994) 48a

Order for Sanctions of the Circuit Court for the Sixth Judicial Circuit of Illinois (April 20, 1994) 50a

TABLE OF AUTHORITIES

Page

CASES

Albright v. Oliver, 510 U.S. ___, 114 S.Ct. 807, 127 L.Ed.2d. 114 (1994) 7, 30-32

Anderson v. Creighton, 483 U.S. 635 (1987) 29

Board of Regents v. Roth, 408 U.S. 564 (1972) 28, 29

Briscoe v. LaHue, 460 U.S. 325 (1983) 21-22, 24

Buckley v. Fitzsimmons, 509 U.S. ___, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993) 21, 22

Burns v. Reed, 500 U.S. 478 (1991) 21

Butz v. Economou, 438 U.S. 478 (1978) 21, 22

Cleavinger v. Saxner, 474 U.S. 193 (1985) 23-24

Dinsman v. Wilkes, 12 How. 390 (1852) 24

Dugas v. City of Harahan, 978 F.2d 193 (5th Cir. 1992), *rehearing denied*, 983 F.2d 234, *certiorari denied sub nom. Bougere v. Ferrara*, ___ U.S. ___, 114 S.Ct. 60, 126 L.Ed.2d. 29 (1993) 17-18

Forrester v. White, 484 U.S. 219 (1988) 21, 25-26

Goss v. Lopez, 419 U.S. 565 (1975) 28, 29

Harlow v. Fitzgerald, 457 U.S. 800 (1992) 21, 22, 27

Imbler v. Pachtman, 424 U.S. 409 (1976) 22

Ingraham v. Wright, 430 U.S. 651 (1977) 31

Kalish v. Illinois Educational Association, 157 Ill.App.3d 969, 510 N.E.2d 1103 (1st Dist. 1987) 8, 15-20, 30

Malley v. Briggs, 475 U.S. 335 (1966) 21, 24, 26

Michael H. v. Gerald D., 491 U.S. 110 (1989) 31

Mitchell v. Forsyth, 472 U.S. 511 (1985) 21

NCAA v. Tarkanian, 488 U.S. 179 (1988) 12

Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981) 22

Owens v. Okure, 488 U.S. 235 (1989) 27

Parratt v. Taylor, 451 U.S. 527 (1981) 31

Perry v. Sindermann, 408 U.S. 593 (1971) 29

Pierson v. Ray, 386 U.S. 547 (1967) 22

Rosenberger v. Rector and Visitors of University of Virginia, ___ U.S. ___, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) 23

Rothman v. Emory University, 828 F.Supp. 537 (N.D.Ill. 1993) 17, 18, 29

Sparkman v. McFarlin, 601 F.2d 261 (7th Cir. 1979) 26

Stump v. Sparkman, 435 U.S. 349 (1978) 26

Tenney v. Brandhove, 341 U.S. 367 (1951) 22

Tower v. Glover, 467 U.S. 914 (1984) 22, 26

Village of Barrington Hills v. Village of Hoffman Estates, 81 Ill.2d 392, 410 N.E.2d 37 (1980), *certiorari denied*, 449 U.S. 1126 (1981) 7

Westfall v. Erwin, 484 U.S.292 (1988) 21

White v. Nicholls, 3 How. 266 (1845) 24

Wisconsin v. Constantineau, 400 U.S. 433 (1971) 28

Zielinski v. Bradley, Cir. Ct., 6th Jud. Cir., Ill., No. 92-S-1044 10

Zielinski v. Schmalbeck, 269 Ill.App.3d 572, 646 N.E.2d 655 (4th Dist.), *appeal denied*, 165 Ill.2d 582, 652 N.E.2d ___ (1995) . . . . . *passim*

CONSTITUTIONAL PROVISIONS

U.S. Const., Art. IV, § 2, cl. 1 2

U.S. Const., Art. VI, cl. 2 . . . . . 2-3, 27

U.S. Const., Amendment IX 3

U.S. Const., Amendment XIV, § 1 . . . . . 3, 28

STATUTES

28 U.S.C. § 1257 2

42 U.S.C. § 1983 . . . . . *passim*

Ill.L. 1819, P.19 24-25

University of Illinois Statute, 110 ILCS § 305/1 9

University of Illinois Statute, 110 ILCS § 305/10 28-29

Illinois Academic Degrees Act, 110 ILCS §§ 1010/1 *et seq.* 28

RULES OF COURT

U.S.Sup.Ct.Rules, Rule 33.7 16

Ill.Sup.Ct.Rules, Rule 39, 278 Ill. R. 397 (1917) 25

Ill.Sup.Ct.Rules, Rule 137, 134 Ill.2d R. 137 (1990) 4, 30

Ill.Sup.Ct.Rules, Rule 701(a), 145 Ill.2d R. 701(a) (1992) 4-5

Ill.Sup.Ct.Rules, Rule 702, 145 Ill.2d R. 702 (1992) 17

Ill.Sup.Ct.Rules, Rule 703(b), 145 Ill.2d R. 703(b) (1992) 11

Ill.Sup.Ct.Rules, Rule 708, 145 Ill.2d R. 708 (1992) 5, 23

Ill.Sup.Ct.Rules, Rule 709(b), 145 Ill.2d R. 709(b) (1992) 5-6, 23

Ill.Sup.Ct.Rules, Rule 710, 165 Ill.2d R. 710 (1995) 6, 17

OTHER MATERIALS

T. Cooley, LAW OF TORTS (1879) 31

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, PROSSER AND KEETON ON THE LAW OF TORTS (5th Ed. 1984) 31

R. Sprecher, *Admission to Practice in Illinois,* 46 ILL. L.REV. 811 (1952) 25

No.

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RICHARD SCHMALBECK, GERARD V. BRADLEY, JEANNE E. GALVIN, and ROBERT BARRY,

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PETITION FOR A WRIT OF *CERTIORARI*

Petitioners STEVEN R. ZIELINSKI and JERROLD H. STOCKS respectfully petition this Honorable Court to issue a writ of *certiorari* to the Appellate Court of Illinois for the Fourth District to review the decision of that court in this case and, upon such review, to reverse the decision below and remand the case for further proceedings.

OPINION BELOW

Part of the opinion of the Appellate Court of Illinois for the Fourth District is reported at 269 Ill.App.3d 572, 646 N.E.2d 655 (4th Dist. 1995). The entire opinion is reprinted in the Appendix at 2a.

The denial by the Illinois Supreme Court of leave to appeal is reported at 165 Ill.2d 582, 652 N.E.2d ___ (1995). The order is reprinted in the Appendix at 1a.

The Memorandum of Decision of the trial court, the Circuit Court for the Sixth Judicial Circuit of Illinois, dismissing Petitioner's Zielinski's complaint below is set forth in the Appendix at 38a; the trial court's Order finding sanctions appropriate as to both Petitioners below is set forth in the Appendix at 48a; and the trial court's Order for Sanctions, imposing monetary penalties upon Petitioners, is set forth in the Appendix at 50a.

JURISDICTION

The opinion of the Appellate Court of Illinois for the Fourth District was entered on February 17, 1995.

The Supreme Court of Illinois denied a timely petition for leave to appeal on June 1, 1995.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The Privileges and Immunities Clause, at Article IV, Section 2, Clause 1, of the United States Constitution provides:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The Supremacy Clause, at Article VI, Clause 2, of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

The Ninth Amendment of the United States Constitution provides:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Section 1 of the Fourteenth Amendment of the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1 of the Civil Rights Act of 1871, codified at 42 U.S.C. § 1983, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper

proceeding for redress.

Rule 137 of the Rules of the Supreme Court of Illinois, 134 Ill.2d R. 137 (1990), provides in pertinent part:

> Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name.... The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass to cause unnecessary delay or needless increase in the cost of litigation. **** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee. All proceedings under this rule shall be within and part of the civil action in which the pleading, motion, or other paper referred to has been filed....

Rule 701(a) of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 701(a) (1992), provides in pertinent part:

> Subject to the requirements contained in these rules, persons may be admitted to practice law in this State by the Supreme Court if they are at least 21 years of

> age, of good moral character and general fitness to practice law, and have satisfactorily completed examinations on academic qualification and professional responsibility as prescribed by the Board of Admissions to the Bar....

Rule 708 of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 708 (1992), provides in pertinent part:

> (a) At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Judicial Districts of this State....
>
> (b) Upon application to register as a candidate for admission to practice law and, where appropriate, upon application to take the bar examination, each applicant shall be passed upon by the committee in his or her district as to his or her good moral character and general fitness to practice law. If required by the committee, each applicant shall appear before the committee of his or her district or some member thereof and shall furnish the committee such evidence of his or her good moral character and general fitness to practice law as in the opinion of the committee would justify his or her admission to the bar.

Rule 709(b) of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 709(b) (1992), provides in pertinent part:

> The Board of Admissions to the Bar and the Committee on Character and Fitness for each judicial district are hereby respectively constituted bodies of commissioners of this Court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for

admission to the bar, examinations given by or under the supervision of the Board of Admissions to the Bar, and the good moral character and general fitness to practice law of applicants for admission. They may call to their assistance in such inquiries other members of the bar and make all necessary rules and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses. The hearings before the commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the commissioners, the clerk of the Supreme Court shall issue subpoenas *ad testificandum*, subpoenas *duces tecum*, or *dedimus potestatem* to take depositions. Witnesses shall be sworn by a commissioner or any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the court. if requested. The commissioners shall report to the Supreme Court the failure or refusal of any person to attend and testify in response to a subpoena.

Rule 710 of the Rules of the Supreme Court of Illinois, 165 Ill.2d R. 710 (1995), provides as follows:

> Any person who communicates information concerning a law student registrant or an applicant for admission to the Illinois bar to any member of the Illinois Board of Admissions to the Bar or to any member of the Character and Fitness Committees or to the Director of Administration, administrators, staff, investigators, agents, or attorneys of the Board or such Committees shall be immune from all civil liability which, except for this rule, might result from such communication. The grant of immunity provided by this rule shall apply only to those communications made by such persons to any member of the Illinois Board of Admissions to the Bar or to any

member of the Character and Fitness Committees or to the Director of Administration, administrators, staff, investigators, agents, or attorneys of the Board or such Committees.

STATEMENT OF THE CASE

The case arises from its disposition in the trial court on a motion to dismiss. Accordingly, for purposes of review the motion to dismiss is deemed to have admitted the allegations of the complaint. *Village of Barrington Hills v. Village of Hoffman Estates*, 81 Ill.2d 392, 410 N.E.2d 37 (1980), *certiorari denied*, 449 U.S. 1126 (1981). *See also Albright v. Oliver*, 510 U.S. ___, 114 S.Ct. 807, 127 L.Ed.2d. 114 (1994). The facts are taken from the complaint and from other submissions and entries in the record.

SUMMARY

A practicing physician entered a State university's law school, earned a law degree, and applied for admission to the State's bar. Subsequent to his graduation three members of the State university's faculty and a female former fellow student, embroiled in diverse controversies with him, created documents with which they poisoned his official university file. They subsequently used those documents in actions against him, including in communicating to bar examiners that the physician had committed acts of sexual and other misconduct. The allegations were false. On the strength of the allegations the examiners deferred the physician's admission to the bar and convened trial-type evidentiary hearings on the matter. At the conclusion of the hearings the examiners found in favor of the physician and recommended his admission to the bar, which followed. The State university nonetheless continues to maintain records of the false allegations in its files. The physician then brought suit in State court against the four complainants, seeking

redress under 42 U.S.C. § 1983 and charging defamation and other torts under the State's common law. The trial court treated the case as if it attacked the bar examination process rather than the malicious behavior of the State university officials. It minimized the conduct of Respondents as nothing other than a passive response to calls from the bar examiners for information about a bar applicant, and invoked the decision of the Appellate Court of Illinois in *Kalish v. Illinois Educational Association*, 157 Ill.App.3d 969, 510 N.E.2d 1103 (1st Dist. 1987), to hold all defendants absolutely immune from all liability for their communications to the bar examiners and otherwise. It thereupon dismissed the action on all counts, including the claims brought under 42 U.S.C. § 1983. The trial court further found that the physician's action was unwarranted by existing law or a good faith argument for a change in the law, and therefore imposed sanctions against the physician and his attorney, ordering them to pay the attorneys' fees and costs of the defendants. The intermediate appellate court affirmed and the State's highest court denied discretionary review.

DR. ZIELINSKI'S BACKGROUND AND LEGAL STUDIES

Petitioner Steven R. Zielinski, M.D., ("Dr. Zielinski"), earned his doctorate in medicine in 1982 from Northwestern University (C. 502)[1] and became a licensed physician (Complaint, Count I, ¶ 1, C. 1), practicing medicine in Illinois (Complaint, Count III, ¶ 4, C. 13). In 1988 he was admitted as a student to

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[1] Dean Schmalbeck's certificate to the Committee on Character and Fitness erroneously gave the date of Dr. Zielinski's medical doctorate as 1980. In fact, Dr. Zielinski received the degree in 1982. The point is not in dispute among the parties. Citations to the common law record certified by the Clerk of the Circuit Court for the Sixth Judicial Circuit of Illinois are denoted by the letter "C" followed by a page number.

the College of Law of the University of Illinois (Complaint, Count I, ¶ 5, C. 2), which is a body politic and corporate of the State of Illinois[2] (Complaint, Count I, ¶ 2, C. 1).

During his three-year law school career he took 30 courses, completed more weeks in residency than were required for his law degree, and accumulated a grade point average of 4.494 on an apparent scale of 5.000 (C. 503-504). The University of Illinois conferred the degree of *juris doctor* upon him on August 5, 1991 (Complaint, Count I, ¶ 5, C. 2).

DR. ZIELINSKI'S BUSINESS QUARREL WITH RESPONDENTS BRADLEY AND BARRY

Respondents Gerard V. Bradley ("Professor Bradley") and Robert Barry ("Professor Barry") were members of the faculty of the University of Illinois during the time that Dr. Zielinski was a law student there, although they were never his teachers (Complaint, Count II, ¶ 7, C. 7; Count XII, ¶ 1, C. 37).[3] Shortly after Dr. Zielinski's admission to the College of Law, Professors Bradley and Barry and Dr. Zielinski agreed to organize a conference and to prepare a book relating to issues of age and the rationing of health care (C. 607). They collaborated together on the project and Professor Barry and Dr. Zielinski each contributed money to it (*ibid*). They had a falling out over the project and, in the spring of 1992, several months after receiving his law degree and leaving the University of Illinois, Dr. Zielinski

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[2] University of Illinois Statute, 110 ILCS § 305/1.

[3] Professor Bradley taught in the College of Law and is no longer on the faculty of the University of Illinois (C. 604). Professor Barry is a Roman Catholic priest (C. 568) and the Newman Professor of Religious Studies at the University of Illinois (C. 609).

brought a civil suit against Professors Bradley and Barry seeking damages for breach of contract (C. 506, 608). The University of Illinois and its attorneys acted on behalf of Professors Bradley and Barry in defending and settling the suit (C. 597).[4]

RESPONDENT GALVIN'S CHARGE OF SEXUAL MISCONDUCT BY DR. ZIELINSKI

Respondent Jeanne Galvin ("Ms. Galvin"), was a student contemporary of Dr. Zielinski at the College of Law of the University of Illinois and was subsequently admitted to the Illinois bar (Complaint, Count IV, ¶ 2, C. 17). In April 1990 Ms. Galvin took part in a trial advocacy course taught by Professor Bradley and conducted on a competitive basis (C. 556). Another student in the course asked Dr. Zielinski to attend and assist him in the proceedings (C. 557). During the proceedings Dr. Zielinski observed Ms. Galvin engage in conduct that he thought transgressed the applicable rules, and he reported his observation to the faculty under the school's honor code (C. 561).

Immediately thereafter, in April 1990, Ms. Galvin charged that Dr. Zielinski had committed various acts against her which she characterized as "sexual harassment", her allegations ranging from claims that Dr. Zielinski had withheld necessary medical

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[4] The ultimate disposition of Dr. Zielinski's contract action against Professors Bradley and Barry does not appear in the record of this case. The record does reflect that Professor Barry admitted by a response to a request to admit facts (C. 564-605) his testimony before the Committee on Character and Fitness in which he confessed the merits of Dr. Zielinski's claim. This Court may take judicial notice, however, that the records of the Circuit Court for the Sixth Judicial Circuit of Illinois disclose that the lawsuit there known as *Zielinski v. Bradley*, No. 92-S-1044, was dismissed by stipulation on the basis of a settlement under which Professors Bradley and Barry paid Dr. Zielinski the amount of $2,500.00, a sum equal to his prayer for relief in that case.

attention to statements that he had physically threatened her (Complaint, Count IV, ¶ 5, C. 18). She brought these charges to the attention of the faculty and administration of the law school, which assembled a written record pertaining to them (Complaint, Exhibit A, C. 43-44; Complaint, Exhibit D, C. 47-53; C. 556-563). All of this was kept secret from Dr. Zielinski, who was never disciplined while in law school, nor made a respondent in any investigative or disciplinary proceeding, nor ever given notice of any such proceeding (Complaint, Count I, ¶ 6, C. 2).

Nonetheless, the allegations of sexual harassment had no merit. According to the dean of the law school, "No formal charge was ever adjudicated by the College of Law, and, as I noted, a thorough investigation of the charge has been concluded with a result favorable to Dr. Zielinski" (C. 498).

DR. ZIELINSKI'S APPLICATION FOR ADMISSION TO THE BAR

Dr. Zielinski applied in 1992 for admission to the Illinois bar, a process that required the certification by his law school of his completion of legal studies (Complaint, Count II, ¶ 7, C. 8; Rule 703(b) of the Rules of the Supreme Court of Illinois; C. 502). Respondent Richard Schmalbeck ("Dean Schmalbeck"), the dean of the College of Law of the University of Illinois,[5] first furnished the required certificate and then, in May 1992, withdrew it, substituting a certificate to which was appended, *inter alia*, written matter provided by Professor Bradley detailing the grievances of Professors Bradley and Barry and Ms. Galvin against Dr. Zielinski (Complaint, Count II, ¶¶ 7-9, C. 8; C. 502-

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[5] Dean Schmalbeck is no longer employed by the University of Illinois. This fact does not appear in the record but is not in dispute. Count XI of the complaint below, discussed *infra*, seeks relief against Dean Schmalbeck's successors.

507). The materials discussed Dr. Zielinski's then-pending litigation against Professors Bradley and Barry and particularly emphasized the charges of sexual harassment made by Ms. Galvin two years before (*ibid*).

A lengthy investigation by the Committee on Character and Fitness of the Supreme Court of Illinois ("the Committee") followed, during which Dean Schmalbeck, Professors Bradley and Barry, and Ms. Galvin furnished written and oral statements rehearsing their charges of sexual harassment and litigiousness (Complaint, Exhibits A-E, C. 43-54). A written objection to Dr. Zielinski's moral character was also submitted by the attorney who is Ms. Galvin's employer and was her counsel below, who admitted in his submission that he had never met Dr. Zielinski and had no personal knowledge of him (C. 555). Dean Schmalbeck was in possession of exculpatory evidence favoring Dr. Zielinski, but he withheld those documents and materials from the Committee. (Complaint, Count I, ¶ 15, C. 5; C. 556-563).

As they lodged objections to Dr. Zielinski's moral fitness and sought to frustrate his admission to the bar, Dean Schmalbeck and Professors Bradley and Barry were all State employees (Complaint, Count I, ¶ 2, C. 1; Complaint, Count II, ¶ 7, C. 7; Count XII, ¶ 1, C. 37). They acted in combination and concert with each other and Ms. Galvin (Complaint, Count II, ¶ 13, C. 10; Complaint, Count V, ¶ 15, C. 22; Count XII, ¶ 7, C. 38-39) and, as they did so, they were cloaked in the authority of the State (Complaint, Count I, ¶ 16, C. 5; Complaint, Count II, ¶¶ 10 and 13, C. 9-10).[6]

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[6] See *NCAA v. Tarkanian*, 488 U.S. 179, 183 (1988) (in performing official functions, university executives unquestionably act under color of State law). Here, Dean Schmalbeck, in undertaking his own investigation into Dr. Zielinski's conduct and in withdrawing his

(continued...)

At the end of the Committee's investigation, in November 1992, the Committee concluded that, absent a formal hearing, it was not prepared to certify Dr. Zielinski as possessing the character and fitness requirements necessary for admission to the Illinois bar (C. 548).

Dr. Zielinski requested such a hearing, and formal proceedings were then held before the Committee during which Dr. Zielinski was represented by Petitioner Jerrold H. Stocks ("Mr. Stocks"), his attorney (see, *e.g.*, C. 510). Dean Schmalbeck (C. 504-547), Professor Barry (C. 568-605), and Ms. Galvin testified during the Committee's hearing.[7] Professor Bradley did not testify during the hearing (C. 604-605).

The hearing ended and, on December 22, 1992, the Committee informed Dr. Zielinski that it had decided in favor of certification of his moral fitness to practice law (C. 554). The Illinois Supreme Court subsequently admitted Dr. Zielinski to its bar, *Zielinski v. Schmalbeck*, 269 Ill.App.3d 572, 580, 646 N.E.2d 660, 661 (App. at 31a).

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[6](...continued)
certification of Dr. Zielinski's qualification for bar admission; his predecessor in inquiring into Dr. Zielinski's conduct and assembling documents about it in an official file; and his successors in maintaining that official file; were clearly acting as "executives" rather than as "teachers" or as non-administrative personnel. Similarly, when Professors Bradley and Barry inserted themselves into the matter of Dr. Zielinski's bar admission, they did so not as teachers but as university officials purporting to have knowledge of Dr. Zielinski's extracurricular behavior.

[7] The transcript of Ms. Galvin's testimony before the Committee does not appear in the record.

THE STATE'S CONTINUING INJURY TO DR. ZIELINSKI

Notwithstanding the determinations that the charge of sexual misconduct against Dr. Zielinski is false, and despite Dean Schmalbeck's admission that investigation of the allegations was concluded favorably to Dr. Zielinski (C. 498), Dean Schmalbeck and his successors -- the custodians of the law school records to which future reference may be made as Dr. Zielinski variously seeks licensure, certification, or employment -- refuse to remove the injurious material from the State university's official files (Complaint, Count XI, ¶¶ 2, 5, 6, and 7, C. 34-36; C. 498-499).

PROCEEDINGS BELOW

On April 29, 1993, Dr. Zielinski filed suit in the Circuit Court for the Sixth Judicial Circuit of Illinois against Dean Schmalbeck, Professors Bradley and Barry, and Ms. Galvin. Counts I (against Dean Schmalbeck), II (against Professor Bradley), V (against Ms. Galvin), and XI (against Dean Schmalbeck and his successors) all raised federal claims, Counts I, II, and V seeking redress under Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, and Count XI seeking injunctive relief against continuing and future deprivations of rights secured by the federal Constitution. Counts III (against Professor Bradley), IV (against Ms. Galvin), and XII (against Professor Barry) pleaded defamation claims under State law. Count VI (against Professor Bradley and Ms. Galvin) pleaded the State law torts of malicious prosecution and abuse of process. Counts VII (against Professor Bradley) and VIII (against Ms. Galvin) pleaded the State law tort of intentional infliction of emotional harm. Counts IX (against Professor Bradley) and X (against Ms. Galvin) pleaded the State law tort of intentional interference with prospective economic advantage.

On December 22, 1993, the trial court entered a Memorandum of Decision granting the motions of all defendants to dismiss the case in its entirety, without leave to amend or replead. The trial court held that State law, as announced in *Kalish v. Illinois Educational Association*, 157 Ill.App.3d 969, 510 N.E.2d 1103 (1st Dist. 1987), conferred on the defendants absolute immunity from all civil liability, including claims under the United States Constitution and federal law, for their communications to the Committee on Character and Fitness.[8]

On March 10, 1994, the trial court entered an Order finding Dr. Zielinski's action unwarranted by existing law or a good faith argument for a change in the law and holding Dr. Zielinski and his attorney, Mr. Stocks, liable for sanctions for having brought the suit.

On April 20, 1994, the trial court entered an Order for Sanctions, directing Dr. Zielinski and Mr. Stocks to pay attorneys' fees and costs to the defendants in the aggregate amount of $26,872.76.

On February 17, 1995, the Appellate Court of Illinois for the Fourth District affirmed the decisions of the trial court.

On June 1, 1995, the Supreme Court of Illinois denied Dr. Zielinski's petition for leave to appeal

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[8] Swept into this all-embracing absolute immunity by the State courts were all communications made by Respondents, whether or not made to bar examiners, including Professor Bradley's memorandum of May 2, 1992, to Dr. Zielinski's student file at the State university, written nine months after Dr. Zielinski graduated from the law school, placed in the file without notice to Dr. Zielinski, and retained there today (C. 506).

This petition followed. It was initially lodged with the Clerk of this Court on August 30, 1995, but was returned, pursuant to Rule 33.7 of the Rules of the Supreme Court, for the correction of defects in printing, and by instruction of the Clerk is timely if lodged with the Clerk on or before July 9, 1996.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS THIS COURT WITH A COMPELLING OPPORTUNITY TO PROTECT THE SUPREMACY OF THE UNITED STATES CONSTITUTION AND FEDERAL LAW AGAINST THE CONFECTION BY STATES OF IMMUNITIES FROM THEM.

A. THE DECISION BELOW SUBORDINATES FEDERALLY-GUARANTEED RIGHTS TO A STATE-DEVISED PRIVILEGE.

In *Kalish v. Illinois Education Association*, 157 Ill.App.3d 969, 510 N.E.2d 1103 (1st Dist. 1987), the Illinois courts dismissed an action brought under State law for defamation, intentional infliction of emotional distress, and civil conspiracy on account of statements[9] that the defendants in that case allegedly had made to the Committee on Character and Fitness. They held

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[9] At issue in *Kalish*, apparently, were informal or preliminary statements rather than testimony given in a trial-type setting, under oath, or by subpoena. *Kalish v. Illinois Education Association, supra,* 157 Ill.App.3d at 978, 510 N.E.2d at 1110. At issue in the case at bar are informal and preliminary communications to the Committee and also communications wholly outside the bar admission process, such as written statements lodged in State university records and Professor Bradley's communications to Dean Schmalbeck inducing the latter, who thitherto had not met and did not know Dr. Zielinski, to alter Dr. Zielinski's records and withdraw certification of his graduation.

that communications to the Committee are absolutely privileged and that those who make them have absolute immunity from civil liability for them. Eight years later the holding of *Kalish* was codified as a rule of the Illinois Supreme Court. Rule 710 of the Rules of the Supreme Court of Illinois, 165 Ill.2d R. 710 (1995).[10]

Kalish was followed by a United States district court having pendent jurisdiction of Illinois State law claims for libel and invasion of privacy in a case involving a Georgia university's communications with the Illinois Board of Bar Examiners,[11] *Rothman v. Emory University*, 828 F.Supp. 537 (N.D.Ill. 1993). Citing *Kalish*, the district court there held that "[b]ecause the Board is a quasi-judicial body, those communications are absolutely privileged under Illinois law." *Rothman v. Emory University*, 828 F.Supp. at 543.

Another federal court applying Florida State law in a diversity defamation case, *Dugas v. City of Harahan*, 978 F.2d 193 (5th Cir. 1992), *rehearing denied*, 983 F.2d 234, *certiorari denied sub nom. Bougere v. Ferrara*, ___ U.S. ___, 114 S.Ct. 60, 126 L.Ed.2d. 29 (1993), addressed the question of immunity from liability for statements made to bar examiners as a matter of first impression under Florida law. Citing *Kalish* as "the only opinion we could find directly on point," *Dugas v. City of Harahan, supra,* 978 F.2d at 197, the Fifth Circuit extended an absolute privilege to such communications "comfortable in so holding that

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[10] The rule was promulgated by the Supreme Court of Illinois on April 4, 1995, 46 days after appellate court handed down the decision here under review.

[11] In 1992 the Illinois Board of Bar Examiners became the Illinois Board of Admissions to the Bar. Rule 702 of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 702 (1992).

we are reaching the same conclusion the Florida Supreme Court would reach if this issue were directly before it." *Dugas v. City of Harahan, supra,* 978 F.2d at 199.

As a body of jurisprudence, *Kalish*, *Rothman*, and *Dugas* establish two crucial points: First, in Illinois and Florida -- and, judging from the meager fruits of the Fifth Circuit's research, *only* in Illinois and Florida -- communications to bar examiners enjoy an absolute privilege. Second, this privilege is very young in American jurisdictions, dating only from 1987.

The wisdom and validity of the privilege insofar as it affects rights, duties, claims, and defenses that are purely matters of State law are questions for the States to decide. But when the privilege impinges on rights and interests that are the subjects of federal guarantees and rights of action -- not the case in *Kalish*, *Rothman*, or *Degas*, none of which involved any claims under 42 U.S.C. § 1983 or other federal laws -- it is a different question altogether.

In the case at bar the courts of Illinois reached dramatically beyond the boundaries of *Kalish* and *Rothman* to presume to subordinate federally-guaranteed rights and federal actions to State-conferred privileges and State immunities. Even more, in this case the Illinois courts are attempting to chill resistance to the State's abridgment of federal protections by imposing sanctions on Petitioners, the plaintiff and the lawyer who asked the State courts to give full faith and credit to 42 U.S.C. § 1983.

B. In Devising a New Absolute Immunity from Liability under 42 U.S.C. § 1983, the State Courts Failed to Undertake the Functional and Historical Analysis Required by this Court.

State actors were not evident to the Appellate Court of Illinois as it considered Dr. Zielinski's claims under 42 U.S.C. § 1983:

> From our examination of plaintiff's complaint, Schmalbeck's actions only involved information going to the Committee and, regardless of his official college position, there was only a status as supplier of information to the Committee. We find there was no conduct under the color of law and, in any case, there was absolute immunity as indicated by *Kalish*. Count I was properly dismissed. The same reasoning applies to count II, which was the section 1983 action against Bradley. There is no way it can be said that Galvin, a mere law student, was acting under color of law and count V, the 1983 action against Galvin, was properly dismissed.

Zielinski v. Schmalbeck, supra, 269 Ill.App.3d at 581, 646 N.E.2d at 661 (App. at 27a-28a). Although the court acknowledged that "U of I College of Law officials are required to certify graduation data to the Board of Examiners", *Zielinski v. Schmalbeck, supra,* 269 Ill.App.3d at 580, 646 N.E.2d at 660 (App. at 26a), it was adamant that "[w]e will not extend liability under section 1983 of the Act to those who are giving recommendations. They are not acting under color of law.... We determine those giving references to fact finders are not intended to be included with those acting 'under color of [S]tate law.'" (*Id.*)

Characterizing Dean Schmalbeck as a mere giver of "recommendations", a furnisher of "references to fact finders", and a "supplier of information", the appellate court plainly ignored other conduct of Dean Schmalbeck present in the case: his undertaking of an investigation into Dr. Zielinski's extracurricular activities; his enlargement and maintenance of an official file on Dr. Zielinski; and his withdrawal and withholding of certification

of Dr. Zielinski's legal education. It also overlooked the facts that the information supplied was false and that it was supplied in concert with others, for reasons of malice. But even within the narrow scope of activity that it was willing to attribute to Dean Schmalbeck -- furnishing recommendations, references, and information -- the appellate court could not overlook the fact that such deeds can be performed by public officials as functions of State government and can be carried on under color of law.

Accordingly, the appellate court proceeded to fashion an absolute immunity from liability under 42 U.S.C. § 1983 and to confer it upon officials of a State law school:

> While we find that section 1983 does not apply to those furnishing recommendations to the Committee, we also recognize the necessity of absolute immunity. The reasons for absolute immunity that apply to the former employer in *Kalish v. Illinois Education Association* (1987), 157 Ill.App.3d 969, 510 N.E.2d 1103, also apply to law school administrators and faculty. The practice of law often involves confidential and fiduciary relationships, in addition to honest acknowledgement [*sic*] of legal capabilities. Those entering the practice of law are justifiably screened, and screening necessarily requires recommendations. If those asked for opinions and those who have relevant information are to be faced with expense and worry of legal actions, based upon libel, slander, or section 1983 of the Act, the ability to obtain a frank and candid evaluation will be seriously hampered. Absolute immunity must exist. In so ruling, we recognize the unique makeup of the Committee.

Zielinski v. Schmalbeck, supra, 269 Ill.App.3d at 580-581, 646 N.E.2d at 660 (App. at 27a). The appellate court believes that the prospect of liability under 42 U.S.C. § 1983 for public officials

intervening in the bar admission process serves no good end. It is emphatic: "Absolute immunity *must* exist." *Ibid. (emphasis added)*.

By contrast, "[a]ware of the salutary effects that the threat of liability can have,...as well as the undeniable tension between official immunities and the ideal rule of law, this Court has been cautious in recognizing claims that government officials should be free of the obligation to answer for their acts in court." *Forrester v. White*, 484 U.S. 219, 223-224 (1988). Thus this Court has carefully limited most public officials to a qualified immunity under Section 1983. *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1992); *Butz v. Economou*, 438 U.S. 478, 508 (1978). It has found qualified immunity sufficient "[i]n most cases," *Buckley v. Fitzsimmons*, 509 U.S. ___, ___, 113 S.Ct. 2606, 2613, 125 L.Ed.2d 209, 223 (1993), to "protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority." *Butz v. Economou, supra,* 438 U.S. at 506. And although in special circumstances this Court has allowed officials the protections of an absolute immunity from Section 1983 liability, it has been "quite sparing" in recognizing absolute immunity, *Forrester v. White, supra,* 484 U.S. at 224, and it has insisted that "the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question." *Burns v. Reed*, 500 U.S. 478, 486 (1991).

Functional analysis is now well-established as the essence of this Court's approach to claims of entitlement to absolute immunity. *Buckley v. Fitzsimmons, supra,* 509 U.S. at ___, 113 S.Ct. at 2612-2615, 125 L.Ed.2d at 222-225; *Burns v. Reed, supra,* 500 U.S. at 484-487; *Westfall v. Erwin*, 484 U.S.292, 296, n.3 (1988); *Forrester v. White, supra,* 484 U.S. at 224; *Malley v. Briggs*, 475 U.S. 335, 342-343 (1966); *Mitchell v. Forsyth*, 472 U.S. 511, 520-523 (1985); *Briscoe v. LaHue*, 460

U.S. 325, 342 (1983); *Harlow v. Fitzgerald, supra*; *Butz v. Economou, supra*; *Imbler v. Pachtman*, 424 U.S. 409, 430-431 (1976). The Court explained the approach in *Buckley v. Fitzsimmons, supra*, 509 U.S. at ___, 113 S.Ct. at 2612-2613, 125 L.Ed.2d at 222-223:

> The principles applied to determine the scope of immunity for state officials sued under Rev.Stat. 1979, as amended, 42 U.S.C. § 1983 are by now familiar. Section 1983 on its face admits of no defense of official immunity. It subjects to liability "[e]very person" who, acting under color of state law, commits the prohibited acts. In *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951), however, we held that Congress did not intend § 1983 to abrogate immunities "well grounded in history and reason." Certain immunities were so well established in 1871, when § 1983 was enacted, that "we presume that Congress would have specifically so provided had it wished to abolish" them. *Pierson v. Ray*, 386 U.S. 547, 554-555 (1967). See also *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 258 (1981). ****
>
> Even when we can identify a common-law tradition of absolute immunity for a given function, we have considered "whether § 1983's history or purposes nonetheless counsel against recognizing the same immunity in § 1983 actions." *Tower v. Glover*, 467 U.S. [914,] 920 [(1984)].

It is not an analysis with which the Appellate Court of Illinois bothered. It attempted to treat Respondents as if they were sued primarily as participants in the bar admissions process, rather than as State actors in their own steads. It saw them as passive, perhaps even reluctant, participants in a drama in which the Committee on Character and Fitness was the active agency. But

this is not a case about bar admissions. It is about the duties that a State university owes to a student and degree-holder.

The appellate court thus burked the facts, which plainly reveal the public offices and functions of Respondents, particularly Dean Schmalbeck. Dr. Zielinski brought his action against State university officials (and another acting in concert with them) to challenge their acts as public officials, plainly bound by the Fourteenth Amendment. *Rosenberger v. Rector and Visitors of University of Virginia,* ___ U.S. ___, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995).

The appellate court also overlooked the very rules that established the Committee, Rule 708(a) of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 708(a) (1992), and governed its work. Those rules imposed on Dr. Zielinski the burden of coming forward with evidence of his character and fitness. Rule 708(b) of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 708(b) (1992). Although others, such as Respondents, might be required to give evidence to the Committee when requested or commanded to do so, Rule 709(b) of the Rules of the Supreme Court of Illinois, 145 Ill.2d R. 709(b) (1992), nothing in those rules imposed upon them, whether as a condition of their own continuing freedom to practice law, as a duty of public office, or otherwise, any obligation to come forward with information. A salient fact about this case is that, when they came forward, they did so on their own initiative and of their own accord.

But it is as witnesses, above all, that the appellate court professes to see Respondents, as if that status were the touchstone of immunity from liability under Section 1983. Now, the common law protection of witnesses called to testify in judicial proceedings is well-grounded in history, preceding the enactment of Section 1983 and not abrogated by it. *Cleavinger v. Saxner*, 474 U.S. 193

(1985), *Briscoe v. LaHue*, 460 U.S. 325 (1983). Had Dr. Zielinski sued Respondents on account of their testimony before the Committee, this might be a very different case. But his action complains of their conduct outside, not inside, the Committee's hearing room; indeed, one of the Respondents, Professor Bradley, never testified before the Committee while another, Dean Schmalbeck, moved unsuccessfully to quash the subpoena under which he was called -- by Dr. Zielinski -- to testify. If it were as "witnesses" at all that Respondents were joined by Dr. Zielinski, it was not as "judicial" or even as "quasi-judicial witnesses" that he sued them, but as "complaining witnesses", and the distinction is vital: "Complaining witnesses were not absolutely immune at common law. In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and without probable cause." *Malley v. Briggs*, 475 U.S. 335, 340-341 (1986).[12] This was true of criminal complainants, *Dinsman v. Wilkes*, 12 How. 390, 402 (1852); it was also true of civil complaints, even when in the nature of a letter to the President of the United States seeking administrative discipline of a customs collector, *White v. Nicholls*, 3 How. 266 (1845).[13]

The courts below never considered the implications of the fact that, although a bar was in being at the time that Illinois entered the federal Union, and although as early as 1819 one's admission to the bar was conditioned upon obtaining a "certificate

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[12] *Malley v. Briggs*, 475 U.S. at 341, n. 3, collects representative cases decided in the nineteenth century by State courts.

[13] Dicta in *White v. Nicholls, supra,* as to judicial immunities have been recently criticized, *Briscoe v. LaHue*, 460 U.S. 325, 332, n.12 (1983), and defended, *Briscoe v. LaHue, supra,* 460 U.S. 353-355 and 355, n. 15 (Marshall, J., dissenting).

from the court of some county of his good moral character", Ill.L. 1819, p. 19, no process for inquiring into or investigating an applicant's moral character was established until 1917, well after the enactment of the Civil Rights Act of 1871. In 1917 the Illinois Supreme Court first organized the Committee on Character and Fitness and gave it authority to conduct investigations and hearings. Ill.Sup.Ct.Rules, Rule 39, 278 Ill. R. 39 (1917). See, generally, R. Sprecher, *Admission to Practice in Illinois,* 46 Ill.L.Rev. 81 (1952).

Had it undertaken the analysis commanded by this Court, the appellate court would have rejected absolute immunity for public officials (and those acting in concert with them) as volunteer informants for bar examiners. The State tribunal's decision creating such an immunity has done violence to the jurisprudence of functional analysis carefully developed by this Court under Section 1983, and warrants plenary review.

C. THE STATE COURTS INDULGED IN JUDICIAL POLICY-MAKING THAT IS IMPROVIDENT AND IMPERMISSIBLE.

In "recogniz[ing] the necessity of absolute immunity", *Zielinski v. Schmalbeck*, 269 Ill.App.3d at 580, 660 N.E.2d at 646, the appellate court was expressing a policy preference based on its fear that "[i]f those...who have relevant information are to be faced with the expense and worry of legal actions, ... the ability to obtain a frank and candid evaluation will be seriously hampered." *Ibid.* But where, as here, putatively relevant information is brought forward by persons who, cloaking themselves in the offices of administrators and teachers at a State university, and holding themselves out to possess objective knowledge gained in an academic setting, are in fact disgruntled business associates with axes to grind, a little "threat of liability"

can have "salutary effects". *Forrester v. White*, 484 U.S. at 223.[14]

Whatever the merits of their policy preferences may be, courts "do not have a license to establish immunities from § 1983 actions in the interests of what we judge to be sound public policy." *Tower v. Glover*, 467 U.S. 914, 922-923 (1984). To the contrary, the judicial "role is to interpret the intent of Congress in enacting § 1983, not to make a freewheeling policy choice." *Malley v. Briggs, supra,* 475 U.S. at 342. A proper effectuation of that role demands faithful inquiry into the common law antecedents of the privilege claimed by a Section 1983 defendant. The court below preferred to make a naked policy pronouncement, instead.[15]

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[14] Even if Dean Schmalbeck were held, by virtue of his administrative functions, to be the only State actor present in the facts of this case, the immunization from liability under Section 1983 of Professor Bradley and Ms. Galvin, who brought the dean into their retaliatory scheme against Dr. Zielinski, should not follow, certainly not as a matter of judge-made public policy. "There is no history of common law immunity afforded private persons who conspire with judges or other state officers to misuse the judicial process. Nor are there any policy considerations that dictate that such private persons should be afforded immunity, absolute or otherwise." *Sparkman v. McFarlin*, 601 F.2d 261, 273-274 (7th Cir. 1979) (Swygert, J., dissenting), *on remand of Stump v. Sparkman*, 435 U.S. 349 (1978).

[15] That would not satisfy this Court, as it made clear in *Malley v. Briggs, supra,* 475 U.S. at 341:

> Nor are we moved by petitioner's argument that policy considerations require absolute immunity for the officer applying for a warrant. As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law. At common law, in cases where probable cause to arrest was lacking, a complaining witness' immunity turned on the issue of malice, which was a

(continued...)

Judicial policy-making of this kind subverts the supremacy of federal enactments such as 42 U.S.C. § 1983 and the underlying constitutional guarantees that they are intended to implement.[16] It is all the more egregious when it is the conceit of a State court that its interests in promoting its administrative machinery are greater than those of the nation in vindicating constitutionally-protected rights. This is a case in which the State courts below need to be reminded of the command of the Supremacy Clause, U.S. Const., Art. VI, cl. 2, that "[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof,...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby...."

II. THIS COURT'S INTERVENTION IS NECESSARY AND WARRANTED TO SECURE CONSTITUTIONAL SAFEGUARDS AGAINST ARBITRARY AND OPPRESSIVE STATE ACTION AND TO VINDICATE THE FEDERAL POWER.

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[15](...continued)
jury question. Under the *Harlow* standard, on the other hand, an allegation of malice is not sufficient to defeat immunity if the defendant acted in an objectively responsible manner. The *Harlow* standard is specifically designed to "avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment," and we believe it sufficiently serves this goal. Defendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue; but if officers of reasonable competence could disagree on this issue, immunity should be recognized.

[16] It is not for State courts to constrict access to federal rights of action. See *Owens v. Okure*, 488 U.S. 235 (1989).

A. LIBERTY AND PROPERTY INTERESTS RELATING TO REPUTATION AND LIVELIHOOD ARE NOT TRIVIAL. THAT ADMISSION TO THE PRACTICE OF LAW IS A PRIVILEGE DOES NOT JUSTIFY A STATE'S ARBITRARY ABRIDGMENT OF THOSE RIGHTS.

Rights are safeguarded, not conferred, by the Constitution. Property interests, for example, are understood to be rooted in, or derived from, some source external to the Constitution, such as State law. *Board of Regents v. Roth*, 408 U.S. 564 (1972). Dr. Zielinski's liberty interests such as "the interests in freedom from defamation and malicious prosecution", are granted "historical protection by the common law of torts" and "are protected by the Due Process Clause", U.S. Const., Amendment XIV, § 1. Where his "good name, reputation, honor, or integrity is at stake because of what the government is doing to him" he is equally entitled to the protections of the Due Process Clause. *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). Illinois should be "constrained to recognize" Dr. Zielinski's "legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause." *Goss v. Lopez*, 419 U.S. 565, 574 (1975). That his "public education" was at the law school level, an "entitlement" made "legitimate" because he paid for it and otherwise qualified for it, and that the danger that it may be "taken away for misconduct" was in the nature of a threat to entry into the livelihood for which the education prepared him, diminish neither his rights nor their safeguards.

Illinois law expressly imparts value to, and protects the value of, academic degrees conferred by its State university. See the Academic Degrees Act, 110 ILCS §§ 1010/1 *et seq.* The University of Illinois Statute, at 110 ILCS § 305/10, makes clear

that the university's degree certifies, *inter alia*, "good moral character". "Law schools are expected to recommend -- and do recommend -- virtually all of their graduates for membership to the bars of various states. Those recommendations are 'services' and 'privileges' that virtually all law students expect to receive." *Rothman v. Emory University, supra,* 828 F.Supp. at 541. When Dean Schmalbeck withdrew his certificate of good moral character from the Committee on Character and Fitness, he contradicted and diminished Dr. Zielinski's law degree. He did so without due process of law, despite the fact that State universities are generally subject to due process standards. *Perry v. Sindermann*, 408 U.S. 593, 601 (1971). The "contours" of Dr. Zielinski's rights were "sufficiently clear that a reasonable official would understand that what he is doing violates those rights". *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Injury to Dr. Zielinski is real. The pain, humiliation, inconvenience, and expense involved in having to defend himself before the Committee on Character and Fitness were not trivial matters. The delay of nearly a year in gaining admission to the bar for which he was qualified is substantial. Dangers persist because the State university's file -- compiled without his knowledge and devoid of his rebuttal -- still exists and has not been expunged. But even were the harms minor, Dr. Zielinski's rights still deserve vindication. "[W]e must look not to the 'weight' but to the *nature* of the interest at stake." *Board of Regents v. Roth, supra,* at 570-571 (*emphasis original*). See also *Goss v. Lopez, supra,* 419 U.S. at 575-576.

B. In Penalizing a Plaintiff and His Attorney for Asserting Claims Under Section 1983, the State Courts Seek to Chill Challenges to State-Adopted Immunities. The Federal Supremacy

INTERESTS INVOLVED WARRANT REVIEW BY THIS COURT.

The trial court imposed sanctions under Rule 137 of the Rules of the Supreme Court of Illinois, 134 Ill.2d R. 137 (1990), and the appellate court affirmed, *Zielinski v. Schmalbeck*, (App. at 35a-37a),[17] on account of "the plaintiff's attempt to use unavailable tort actions", *id.* (App. at 36a). The central tort actions were Dr. Zielinski's Section 1983 claims against State university officials who, as he complained, maliciously communicated false information about him to State bar examiners with intent to injure him. The action was "unavailable", in the eyes of the lower courts, solely because of the decision in *Kalish v. Illinois Educational Association, supra,* one of only two decisions known to the parties and the courts below to have been reported anywhere in America conferring absolute immunity on persons communicating with bar examiners -- neither of them involving federal rights or actions.

Such sanctions are utterly inappropriate given the state of the law. Torts of the kind committed by Respondents have traditionally been actionable; it was not, and is not, clear that the decision in *Kalish* vitiated claims under federal law for wrongful communications to bar examiners; and it is crucial to preserve access to federal causes of action for wrongs that State laws fail to remedy. As this Court observed in *Albright v. Oliver*, 510 U.S. at ___, 114 S.Ct. at 818-819, 127 L.Ed.2d at 130-131 (Kennedy, J., concurring) (*emphasis added*):

> The common law of torts long recognized that a malicious prosecution, like a defamatory statement, can cause

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[17] The appellate court's discussion of sanctions was omitted from the published versions of its opinion.

unjustified torment and anguish -- both by tarnishing one's name and by costing the accused money in legal fees and the like. See generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, PROSSER AND KEETON ON THE LAW OF TORTS § 119, pp. 870-889 (5th Ed. 1984); T. Cooley, LAW OF TORTS 180-187 (1879). We have held, of course, that the Due Process Clause protects interests other than the interest in freedom from physical restraint, see *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), and for purposes of this case, we can assume *arguendo* that some of the interests granted historical protection by the common law of torts (such as the interests in freedom from defamation and malicious prosecution) are protected by the Due Process Clause. Even so, our precedents make clear that a state actor's random and unauthorized deprivation of that interest cannot be challenged under 42 U.S.C. § 1983 *so long as the State provides an adequate post-deprivation remedy*. *Parratt v. Taylor*, 451 U.S. 527, 535-544 (1981); see...*Ingraham v. Wright*, 430 U.S. 651, 674-682 (1977); *id.*, at 701 (Stevens, J., dissenting) ("adequate state remedy for defamation may satisfy the due process requirement when a State has impaired an individual's interest in his reputation").

**** The *Parratt* principle respects the delicate balance between state and federal courts and comports with the design of § 1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution. ****

Yet it is fair to say that the courts, including our own, have been cautious in invoking the rule of *Parratt*. **** That hesitancy is in part a recognition of the important role federal courts have assumed in elaborating vital constitutional guarantees against arbitrary or oppressive state action. We want to leave an avenue open

> for recourse where we think the federal power ought to be vindicated.

The State courts below have thrown up a barricade across that avenue. This Court should take care to remove it.

The State courts below arbitrarily confected an absolute immunity against liability under 42 U.S.C. § 1983. If allowed to stand, its effect will be to deprive Dr. Zielinski of rights guaranteed to him under the Constitution. Beyond denying him the relief to which Section 1983 entitles him, however, those courts seek to punish him and his attorney, Mr, Stocks, for applying to them for the enforcement of Dr. Zielinski's federal rights. Their decision thus moves beyond error and arbitrariness to oppression. It is in precisely circumstances such as the case at bar that principles of federalism compel the intervention of this Court.

The State courts below arbitrarily confected an absolute immunity against liability under 42 U.S.C. § 1983. If allowed to stand, its effect will be to deprive Dr. Zielinski of rights guaranteed to him under the Constitution. Beyond denying him the relief to which Section 1983 entitles him, however, those courts seek to punish him and his attorney, Mr. Stocks, for applying to them for the enforcement of Dr. Zielinski's federal rights. Their decision thus moves beyond error and arbitrariness to oppression. It is in precisely circumstances such as the case at bar that principles of federalism compel the intervention of this Court.

CONCLUSION

The State court decisions below are an affront to the United States Constitution and 42 U.S.C. § 1983. Petitioners pray, therefore, that a writ of *certiorari* will issue to the Appellate Court of Illinois for the Fourth District, and that this Court will review and reverse that decision, vacate the sanctions imposed below, and remand the case for further proceedings.

Dated: July 9, 1996.

Respectfully submitted,

JOSEPH A. MORRIS
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APPENDIX

APPENDIX

Page

Order of the Supreme Court of Illinois denying leave to appeal (June 1, 1995) 1a

Opinion of the Appellate Court of Illinois for the Fourth District (February 17, 1995) 2a

Memorandum of Decision of the Circuit Court for the Sixth Judicial Circuit of Illinois (December 22, 1993) 38a

Order of the Circuit Court for the Sixth Judicial Circuit of Illinois (March 10, 1994) 48a

Order for Sanctions of the Circuit Court for the Sixth Judicial Circuit of Illinois (April 20, 1994) 50a

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, IL. 62706
(217) 782-2035

78818

June 1, 1995

Mr. Jerrold H. Stocks
Winters, Featherstun, Gaumer, Kenney et al.
250 North Water Street, S#1151, P.O. Box 1760
Decatur, IL 60525

No. 78818 - Steven R. Zielinski et al., etc., petitioners, v. Richard Schmalbeck et al., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 23, 1995.

FILED
FEB 17 1995
Clerk of the
Appellate Court, 4th Dist.

NO. 4-94-0484

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

STEVEN R. ZIELINSKI,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
and	)	Champaign County
JERROLD H. STOCKS,	)	No. 93L607
His Attorney,	)	
Appellant,	)	
v.	)	
RICHARD SCHMALBECK,	)	
GERARD V. BRADLEY,	)	
JEANNE E. GALVIN and	)	Honorable
ROBERT BARRY,	)	Dan L. Flannell,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE LUND delivered the opinion of the court:

Plaintiff Steven Zielinski filed a 42-page, 12 count complaint in the circuit court of Champaign County, listing the following as defendants: Richard Schmalbeck, Gerard V. Bradley, Jeanne E. Galvin, and Robert Barry. Based upon defendants' motions under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 1992)), the trial court dismissed all counts with prejudice.

Sanctions based upon Supreme Court Rule 137 (134 Ill. 2d R. 137) totaling $26,872.76 were entered against plaintiff and his attorney Jerrold H. Stocks. Plaintiff appeals from both the dismissal and the sanctions. Stocks appeals from the sanctions.

I. PARTIES

A. Plaintiff Steven R. Zielinski

Plaintiff first obtained his medical degree and then became a law student at the University of Illinois (U of I) College of Law. He became friends with defendant Bradley and was introduced to defendant Galvin. Eventually, he became the subject of complaints of sexual harassment from Galvin.

B. Defendant Richard Schmalbeck

Schmalbeck, dean of the U of I College of Law (Dean), was responsible for certifying plaintiff's character, upon graduation, to the Illinois State Board of Law Examiners (Board of Examiners) (now the Board of Admissions to the Bar) and the Character and Fitness Committee (Committee). Based upon information from Bradley and Galvin, he refused to certify plaintiff's character.

C. Defendant Gerard V. Bradley

Bradley was a law professor at the U of I College of Law, and the trial practice course was one of his responsibilities. He evidently introduced Galvin to plaintiff. He eventually recommended that the Dean not certify plaintiff as being morally fit to practice law in Illinois. Bradley was (as were Galvin, Barry, and plaintiff) involved in what is popularly referred to as the "pro-life movement."

D. Defendant Jeanne E. Galvin

Galvin was a student at the U of I College of Law, as well as being a student in Bradley's trail practice course. She was active in the pro-life movement and sought medical knowledge from plaintiff in connection with her pro-life activities. She eventually complained of plaintiff's harassment.

E. Defendant Robert Barry

Defendant Barry is apparently a priest who was an advisor to a pro-life organization that existed on the U of I campus. Plaintiff, for a time, was apparently part of this pro-life group.

F. Jerrold H. Stocks

Stocks is plaintiff's attorney of record in the trial court proceedings.

II. BACKGROUND

The pleadings and arguments provide a view of the background for the cause of action. Plaintiff and Bradley were friends. Bradley introduced plaintiff to Galvin. All were interested in the pro-life movement, and Galvin thought plaintiff's medical background would be helpful. Plaintiff's interest in Galvin eventually went beyond the pro-life movement. Galvin's interest did not go beyond friendship, and she rebuffed plaintiff. According to Galvin's communication to Bradley, and eventually to Schmalbeck, plaintiff's conduct was, in her opinion, sexual harassment and included plaintiff's contact with Galvin's parents. Bradley rebuked plaintiff. Bradley's communication to Schmalbeck included allegations that plaintiff had made false allegations of unethical conduct by Galvin in her trial practice participation. Bradley's communication to Schmalbeck stated that plaintiff was not morally fit to practice law. Schmalbeck informed plaintiff that he was not furnishing the Board of Examiners with the usual certification related to character and fitness.

Barry allegedly made statements to the pro-life group that plaintiff had sexually harassed Galvin. He allegedly also responded negatively in a report to the Committee. The negative report was based upon the alleged harassment. After a hearing before the Committee, plaintiff was granted the license to practice law in Illinois in May 1993.

Plaintiff received his law degree in August 1991 and, about April 30, 1992, delivered to Schmalbeck a form certificate from the Board of Examiners. This form was used to establish

that the applicant for law license had obtained necessary educational requirements. It also called for a reference to the applicant's character and fitness to practice law.

A. Board of Examiners and the Committee

Supreme court rules relevant to issues and time were Supreme Court Rules 701, 702, 704, 708, and 709 (134 Ill. 2d Rules 701, 702, 704, 708, 709). The rules effective until July 1992, are relevant. (These rules were amended effective July 1, 1992.) "[G]ood moral character and general fitness to practice law" is a condition of admission. (134 Ill. 2d R. 701.) The application for license to practice was made to the Board of Examiners, a board appointed by the Supreme Court of Illinois. A Committee was (and is) appointed for each judicial district of the State, and members of the Board of Examiners were ex officio members. 134 Ill. 2d R. 708(a).

Both the Board of Examiners and the Committee were provided with the power to adopt and alter rules not inconsistent with their functions. (134 Ill. 2d R. 709(a).) They also had authority to hear complaints. 134 Ill. 2d R. 709(b).

Plaintiff's procedure for application for the bar exam and license to practice law included a form from the U of I College of Law that stated:

> "As an inducement to the Illinois Board of Law Examiners and/or any Character and Fitness Committee to investigate and reach a determination respecting my moral character, reputation and fitness for the practice of law, I hereby release, discharge and exonerate the Illinois Board of Law Examiners, the Character and Fitness Committees, their members, agents and representatives, and any person or entity furnishing documents, records or other information, from any and all liability of every nature and kind arising out of any such investigation or out of the furnishing, inspection or use of such documents, records,

and other information." (Emphasis added.)

B. Plaintiff's Complaint

1. Count I

On April 29, 1993, plaintiff filed his complaint against defendants. Count I alleged deprivation of rights under section 1983 of the Civil Rights Act of 1871 (Act) (42 U.S.C. §1983 (1988)) against Schmalbeck and alleged (1) at all relevant times, Schmalbeck was Dean at the U of I College of Law; (2) plaintiff was enrolled as a law student from 1988 to 1991, and he received his degree in August 1991; (3) during his tenure as a student, plaintiff was never the subject of a disciplinary proceeding or advised of any adverse matters in his record; (4) about April 30, 1992, he tendered to Schmalbeck the certificate required by the Board of Examiners; (5) Schmalbeck executed a "Certificate of Legal Education" and standard recommendation for plaintiff but, on May 27, 1992, announced his intention to withhold the standard recommendation for plaintiff on the basis of an investigation of plaintiff in which he solicited comments from faculty, including a May 5, 1992, memorandum from Bradley; (6) Schmalbeck took, no steps to verify the charges made in the solicited information; (7) much of the information solicited as part of the investigation related to personal relationships and public statements made by plaintiff on public policies which bore no relationship to plaintiff's attendance or performance as a student at the U of I College of Law and was also lacking in substantive merit; (8) Schmalbeck, acting under color of State authority, issued a de facto sanction against plaintiff by withdrawing the standard recommendation; (9) plaintiff received no notice of the investigation and was afforded no opportunity to rebut the charges; (10) Schmalbeck denied the existence of the file assembled on plaintiff, including the "Benfield file," despite requests from plaintiff and his representative for access to it; (11) Schmalbeck forwarded portions of the file to the Committee and withheld portions of it, including the "Benfield file" and certain exculpatory

documents, and assured the Committee that the withheld documents would not add significantly to the information already received; (12) Schmalbeck's actions constituted a deprivation of rights under amendments I, IV, and XIV of the United States Constitution (U.S. Const., amends I, IV, XIV), denying plaintiff his rights in one or more of the following ways: (a) procedural due process because there was no notice and hearing; (b) substantive due process in that the investigation and sanction constituted an arbitrary and capricious action in the absence of authority to act; (c) his freedom of enterprise to practice as a lawyer, doctor, consultant, or speaker or, alternatively, delayed or restricted such freedom; (d) his first amendment right of access to information in the investigative file; (e) his first amendment right of free speech and to petition the government, in that Schmalbeck's actions were based wholly or partly on comments plaintiff had made in the media regarding lawsuits he had filed against the U of I and Bradley; (f) his right to privacy under amendments I, III, IV, V, and IX of the United States Constitution (U.S. Const., amends. III, IX) by assembling a dossier containing information irrelevant to the legitimate operations of the U of I College of Law and disseminating that information to third persons; (g) the right to be free of malicious prosecution and abuse of process because the investigation was in retaliation for lawsuits and prior complaints against the faculty; and (h) the equal protection of the laws, rules, and regulations of the U of I College of Law by treating plaintiff differently than other graduates for whom the standard recommendation was issued; and (13) as a proximate result of the foregoing, plaintiff suffered, and continues to suffer, from extreme mental anguish and emotional harm with physical manifestations, sustained damage to his reputation, great embarrassment and humiliation, lost, and continues to lose, business and employment opportunities and income, and has had his liberty restricted. Plaintiff asked for compensatory damages and attorney fees. He also alleged he was entitled to punitive damages.

2. Count II

Count II was against Bradley and alleged a deprivation of plaintiff's rights under section 1983 of the Act. It made many of the same allegations as in count I. Where different, it alleged (1) Bradley participated in Schmalbeck's investigation and incited Schmalbeck to act by making allegations against plaintiff orally and reduced some of them to writing in his May 5, 1992, memorandum; (2) Bradley participated with Schmalbeck in issuing the de facto sanction by withdrawing the Dean's certificate with the standard recommendation; (3) from April 1990 to April 1992, Bradley made allegations against plaintiff of sexual harassment, unethical conduct, publication of false statements, and other conduct, while urging disciplinary action against plaintiff; (4) Bradley, while cloaked with State authority, induced or conspired with Galvin to bring the aforementioned charges in retaliation for plaintiff's reports of potential misconduct on Bradley's or Galvin's part, or to coerce the withdrawal of his reports, and these actions contributed to the issuance of the de facto sanction against plaintiff; and (5) Bradley's actions deprived plaintiff of his rights in the same manner as alleged in count I. This count asked for compensatory and punitive damages.

(The material discussing counts III and IV is not to be published pursuant to Supreme Court Rule 23 (Official Reports Advance Sheet No. 15 (July 20, 1994), R. 23, eff. July 1, 1994)).)

[The following material is not to be published pursuant to Supreme Court Rule 23]

3. Count III

Count III sounded in defamation and was against Bradley. It alleged (1) plaintiff was a licensed and practicing physician and rendered professional services with respect to medical consulting for litigation, legislative, and public interest purposes and that Bradley had actual knowledge of these endeavors; (2) beginning in April 1990 and continuing to July 1992, Bradley communicated,

orally and in writing, a series of false statements and charges against plaintiff: (a) on April 24, 1990, Bradley stated in a written memorandum to Dean Marion Benfield of the U of I College of Law, which he in turn republished to others, charging plaintiff with unethical conduct, sexual harassment of Galvin, and filing false statements with U of I officials, (b) from April 5, 1990, to April 18, 1990, Bradley made statements to defendant Barry, who republished them to Thomas Marzen (apparently also involved in the pro-life movement) that plaintiff was guilty of sexual harassment of a female law student, (c) on May 5, 1992, Bradley wrote the memorandum to Schmalbeck charging plaintiff with sexual harassment of a female law student, moral unfitness to practice law, and abuse of process, (d) on July 20, 1992, Bradley wrote in a letter to the Committee that plaintiff had harassed a female student, that he did not possess the requisite character and fitness, his reputation for integrity, sense of honor, and morality were poor, he was not honest, either due to a tendency to lie or an inability (psychological or otherwise) to distinguish truth from falsity, and would almost certainly use the law as a weapon to "smite" his enemies, (e) on a date believed to be continuing form April 1990 to May 1992, Bradley made statements to professor Thomas Mengler to the effect that plaintiff's conduct as the U of I College of Law exhibited his lack of character and fitness for the practice of law, and (f) Bradley acted in concert with Galvin for the purpose of accusing plaintiff of sexual harassment, unethical conduct, and moral unfitness, such that Bradley is legally accountable for certain false statements and charges made by Galvin pursuant to a civil conspiracy; (3) Bradley knew the statements to be false and published the statements to retaliate, coerce, or harass plaintiff; (4) the statements were actionable per se, as they impute unfitness to practice medicine and law, mental instability or disorder, immorality, and the commission of criminal offenses, and were made with actual malice or reckless disregard for the truth or falsity of the statements; (5) the above statements constitute continuing torts in that each republication caused new

injury; and (6) plaintiff is entitled to special damages or has been damaged in that he suffered humiliation, embarrassment, mental distress, injury to business reputation, and lost professional and consulting opportunities and income. The count asked for compensatory and punitive damages.

The memorandum of April 24, 1990, from Bradley to Benfield referred to in count III concerned statements made by plaintiff to Benfield regarding alleged unethical conduct at a student trial in the trial advocacy program that Bradley supervised. Bradley expressed the opinion that no such conduct occurred and noted that plaintiff was not then enrolled in the U of I College of Law. Bradley sought to explain the motivation for plaintiff's report by stating that based upon his conversations with plaintiff he felt that plaintiff was obsessed with Galvin, who was one of the targets of plaintiff's report. Bradley further stated that Galvin was once the target of plaintiff's affections, that Galvin had told him his attentions were unwelcome, and that Galvin was now the target of plaintiff's "disaffection." Bradley asserted that many of the statements made in plaintiff's report were false and that plaintiff knew of their falsity. Bradley recommended that before plaintiff was readmitted to study at the U of I College of Law, his entire course of conduct toward Galvin and the trial advocacy program should be examined to determine his moral fitness.

A memorandum from Bradley referred to in count III and dated May 5, 1992, which plaintiff alleges was communicated to Schmalbeck, stated that in Bradley's opinion plaintiff was morally unfit to practice law. Two years previous, plaintiff and Bradley had a falling out over plaintiff's harassment of a female law student. He knew the law student and she, knowing he and plaintiff were friends, asked Bradley to persuade plaintiff to leave here alone. Plaintiff continued to harass her, and Bradley ended his friendship with plaintiff over this. In September 1991, plaintiff accused Bradley of misappropriating funds to which plaintiff claimed he was entitled. This involved a scholarly conference held in October 1989 to which plaintiff had contributed funds.

The conference had been organized by Bradley, Barry, and plaintiff. Plaintiff filed a small claims suit against Bradley and Barry for money, in an attempt to harass and embarrass Bradley because of his attempt to hold plaintiff accountable for his sexual harassment.

Bradley's affidavit of character and fitness to the Committee, also referred to in count III, stated that plaintiff's reputation for integrity, sense of honor, and morality was poor. He also said he believed plaintiff did not possess the necessary character and fitness to practice law; he is not honest or truthful; and would use the law as a weapon to punish his enemies. Bradley also stated that from fall 1989 to spring 1990, plaintiff harassed a female law student quite extensively. He urged the Committee to seek details directly from Galvin.

A statement from Galvin, referred to in count III, detailed the alleged harassment by plaintiff. It was given to Benfield in April 1990 and stated that Galvin met plaintiff in 1989 through Bradley. She was friendly with him at first and asked him for information her sister needed for her work in the pro-life movement. She introduced him to her sister and her parents, who were also involved in the movement. When plaintiff began to make advances toward her, Galvin told him the advances made her feel uncomfortable. Plaintiff began sending her letters, to which she never responded. Plaintiff would stop by her Champaign and Chicago residences uninvited and bring her flowers and gifts. He ignored her requests to cease this conduct. Plaintiff began to spread rumors about her with her friends as to her behavior in a certain professor's class. When she went to the professor to straighten things out, the professor said he had no idea what she was talking about and that there was nothing wrong with her behavior in his class. Plaintiff began calling her family and telling them that she had "led him on" and that she needed professional help. He also started to harass her boyfriend when the boyfriend asked plaintiff to leave Galvin along. He called her mother, who is in poor health, prompting her mother to call her regularly to see

if she was okay. Plaintiff also began to make false statements about her to her friends, harassing her friends and making false statement about them. He also harassed her parents by sending them pizzas they had not ordered. Plaintiff accused her of cheating during her simulated trial in her trial advocacy class. He sat in on the entire trial, even though he was not enrolled in the U of I College of Law at the time and Bradley had asked him to leave. She believes the purpose was to harass her.

Galvin's affidavit to the Committee, also referred to in count III, attached a copy of her complaint to the U of I College of Law about plaintiff's actions.

4. Count IV

Count IV was against Galvin for defamation. It alleged the publication of alleged false statements by Galvin about plaintiff. One of those statements was allegedly made in 1992 to John Panegasser, Galvin's attorney, accusing plaintiff of harassment and stating that he lacked character and fitness to practice law. It also charged Galvin with civil conspiracy with Bradley in regard to the statements referred to in previous counts of the complaint.

[The preceding material is not to be published pursuant to Supreme Court Rule 23]

5. Count V

Count V charged deprivation of rights under section 1983 of the Act against Galvin and realleged most of the allegations of count II. In addition, it alleged that Galvin was a willing participant in the joint activities of Schmalbeck and Bradley, thus making her liable for damages. Plaintiff asked for compensatory and punitive damages.

(The material discussing counts VI through XII and section C on the motions to dismiss is not to be published pursuant to Supreme Court Rule 23.)

[The following material is not to be published pursuant to Supreme Court Rule 23]

6. Count VI

Count VI was for malicious prosecution and abuse of process against Bradley and Galvin. It alleged (1) they commenced a "prosecution" at the U of I College of Law by filing a complaint seeking disciplinary action against plaintiff; (2) the complaint consisted of Bradley's April 24, 1990, memo to Benfield and Galvin's statement to U of I College of Law authorities concerning plaintiff's alleged harassment; (3) prior to the filing of these documents, plaintiff had reported potential improprieties on the part of Bradley and Galvin as alleged in prior counts, which prompted the actions of Bradley and Galvin as retaliation or coercion; (4) during April 1990, plaintiff was advised that no action would be taken on his own reports and that Galvin had withdrawn her complaints; (5) in April and May 1992, Bradley continued the presentation of his charges to Schmalbeck, which resulted in the denial of the standard recommendation to plaintiff; (6) Schmalbeck forwarded the documents prepared by Bradley and Galvin to the Committee; (7) the Committee segregated plaintiff's application for heightened inquiry and later informed the Board of Examiners that it was unable to certify plaintiff as satisfying the character and fitness requirements of Supreme Court Rule 708, citing the allegations of sexual harassment and the statement of Bradley, Galvin, Schmalbeck, and others; (8) the charges made by Bradley and Galvin and to the Commlttee constituted disciplinary proceedings within the U of I College of Law; (9) the proceedings before the Committee terminated in plaintiff's favor by certifying his good moral character and fitness to practice law; and (10) there was no probable cause for the charges made by Bradley and Galvin and, as a proximate result thereof, plaintiff suffered humiliation, embarrassment, and has sustained injury to his business reputation. Compensatory and punitive damages were prayed for.

7. Count VII

Count VII was for intentional infliction of emotional harm against Bradley. It realleged many of the allegations of counts II

and III and further alleged (1) plaintiff believed Bradley had the authority to adversely affect his standing at the U of I College of Law and his attainment of the rights and privileges to become a licensed attorney; (2) Bradley engaged in extreme and outrageous conduct; (3) Bradley intended to cause severe emotional distress or acted in reckless disregard of the likelihood that his actions would cause such distress, in that he knew his charges would jeopardize plaintiff's expectation of obtaining a degree and license and that it was reasonably foreseeable that the charges would be communicated to the Committee; (4) the conduct constituted a continuing tort, which plaintiff first suspected in July 1992 and discovered in December 1992, when he saw the May 5, 1992, memo from Bradley; and (5) as a result, plaintiff suffered severed emotional distress with physical manifestations, personal humiliation, and embarrassment; compensatory and punitive damages were requested.

8. Count VIII

Count VIII pleaded intentional infliction of emotional harm against Galvin. It incorporated allegations in counts IV and V and alleged the statements and conduct constituted extreme and outrageous conduct. It further alleged a continuing tort from April 1990 to December 1992 and alleged that plaintiff first discovered the conduct in December 1992.

9. Count IX

Count IX was for intentional interference with prospective economic advantage against Bradley. It realleged parts of counts II and III and further alleged (1) Bradley was involved in the recruitment of plaintiff at the U of I College of Law and had knowledge of plaintiff's involvement in pro-life organizations, his medical consulting work, his speaking engagements,and his desire to pursue legal-medical consulting; (2) plaintiff was reasonably certain to realize substantial prospective economic advantage from continuing and future involvement with pro-life organizations and continuance of medical consultation for those organizations and other economic relationships which would accrue by virtue of

being licensed as a attorney; (3) Bradley's acts caused (and continue to cause) pro-life organizations and other organizations to refrain from doing business with plaintiff and caused delay in plaintiff's obtaining his law license; and (4) as a result, plaintiff sustained damage to his reputation and business relationships and has lost income. He asked for compensatory and punitive damages.

10. Count X

Count X pleaded the same cause of action against Galvin and made the same allegations against her.

11. Count XI

Count XI was for injunctive relief against Schmalbeck or his successor in his official capacity. It alleged (1) the documents of which plaintiff complains are retained at the U of I College of Law and the retention, and further distribution of the information will cause irreparable harm to plaintiff's reputation and constitutes a limit, encumbrance, or cloud on his degree; (2) such retention and disclosure would violate plaintiff's constitutional rights under amendments I, IV and XIV of the United States Constitution in the manner alleged in count I of the complaint; and (3) no adequate remedy at law exists to compel Schmalbeck or his successor to expunge the records or prohibit further distribution to third parties. Plaintiff asked that Schmalbeck or his successor be enjoined from retaining the records or distributing any of the information contained therein and for expunging all information relating to the investigation.

12. Count XII

Count XII was against Barry and alleged defamation. It alleged (1) Barry was involved in recruiting plaintiff as a student ta the U of I College of Law and was aware of plaintiff's association with a student organization called "Life is for Everyone" (for which Barry was the faculty advisor) and with the National Legal Center for the Medically Dependent and Disabled (Center) and other pro-life organizations; (2) in 1990, a dispute arose between Barry and members of the student group for which

Barry held plaintiff accountable; this resulted in plaintiff's discontinued membership in the group and Barry's removal or resignation as faculty advisor; (3) since then, Barry has made false statement about plaintiff as follows: (a) between April 5 and 18, 1990, Barry told Thomas Marzen of the Center that plaintiff was guilty of sexually harassing a female law student, (b) Barry told members of the student group that plaintiff was in trouble for harassing a female student, (c) in July 1992, Barry told the Committee that plaintiff was willing to twist the truth to serve his ends and that he had not been granted hospital privileges to practice medicine, which Barry thought reflects on his ability to deal with people, and (d) Barry acted in concert with Bradley for the purpose of accusing plaintiff of sexual harassment, unethical conduct, and moral unfitness, such that he is legally accountable for false statements made by Bradley pursuant to a civil conspiracy (statements and charges complained of are set forth in prior counts); (4) Barry could have determined the truthfulness or falsity of the statements, or he knew of his own personal knowledge that they were false; and (5) Barry's actions were motivated by the dispute between Barry and the student organization or in retaliation for reports by plaintiff of potential misconduct on Bradley's part.

C. Defendants' Sections 2-615 and 2-619 Motions to Dismiss

All defendants filed motions to dismiss, based upon section 2-615 and/or section 2-619 of the Code. Barry's motion to dismiss count XII was based on section 2-615 of the Code and alleged that plaintiff's defamation action was barred by the one-year statute of limitations contained in section 13-201 of the Code (735 ILCS 5/13-201 (West 1992.)). The motion also alleged that plaintiff's defamation action, based upon statements made by Barry to the Committee, was barred because the statements were absolutely privileged. It also alleged that plaintiff's allegations of a civil conspiracy were unsupported by factual allegations and, further, were legally insufficient because the statements were absolutely privileged and not actionable.

Schmalbeck and Bradley filed a joint motion asking for dismissal of all counts against them on the basis of sections 2-615 and 2-619 of the Code. The motion alleged absolute immunity for all statements made to the committee or for any activity in preparation for such statements. It also alleged that Schmalbeck was immune for any action imposed upon him by the Supreme Court of Illinois as the dean of a law school. It further alleged that Schmalbeck has a qualified immunity from suit because the constitutional rights alleged to have been violated are not clearly established by Federal law. It also alleged that plaintiff had not pleaded facts to support many of his allegations, including his allegations of damage, and that Bradley was not acting under color of law. The motion further alleged that plaintiff's claim of defamation was barred by the one-year statute of limitations. The allegations of conspiracy between Bradley and Galvin are not supported by facts. As to the claim of malicious prosecution or abuse of process, the motion alleged that this claim was barred by the two-year statute of limitations. In addition, no official action was taken and any statements made by Bradley and Galvin to Schmalbeck for the purpose of informing Schmalbeck so that he could make a recommendation to the Committee are absolutely privileged. The motion alleged that as a matter of law Bradley's actions do not amount to intentional infliction of emotional distress and, insofar as his actions may have resulted in communications to the Committee, they are absolute privileged. As to the claim for intentional interference with prospective economic advantage, the motion alleged that plaintiff had not alleged Bradley communicated with the groups with which plaintiff had an expectation of a business relationship. There were no factual allegations concerning the reasonableness of plaintiff's expectancy and, at best, plaintiff alleged a hope or desire to have certain relationships that he alleges Bradley interfered with. The motion alleged that plaintiff had no right to expunge official files at the U

of I College of Law. Plaintiff has not pleaded any facts to establish that maintenance of the records is causing him any damage.

The joint motion also sought dismissal under section 2-619 of the Code as to all counts against Schmalbeck and Bradley, relying on a clearance form executed by plaintiff. That form requested the U of I College of Law to forward, to the Board of Examiners, a form entitled "Proof of Legal Study" requesting information on class rank, grade point average, and a statement by the Dean about whether he had any information that might adversely reflect upon plaintiff's character and reputation, as well as whether the Dean would recommend plaintiff for a position of trust and confidence. The form gave plaintiff's permission to the U of I College of Law to provide the information requested on the form. The motion was also based upon an authorization and release form believed to be executed by plaintiff, in which he authorized the Board of Examiners and the Committee to conduct an investigation of his moral character, reputation, and fitness for the practice of law and released any person or entity from liability who furnished information in the course of the investigation. This release is required to be signed by all applicants to the bar.

Galvin filed a motion to dismiss under sections 2-615, 2-619 of the Code and under section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 1992)). As to count IV (defamation and conspiracy), she alleged that the statute of limitations as to defamation barred plaintiff's action and that any statement made by her to the Committee were absolutely privileged and that plaintiff's release also bars his claim. The conspiracy claim fails for the same reasons. Galvin also sought dismissal on the basis of section 2-615 of the Code, alleging that plaintiff had pleaded no facts to support his conspiracy claim. As to count V (deprivation of rights), Galvin alleged that she could not be liable under section 1983 of the Act because she is a private individual and plaintiff had made no factual allegations to support his claim that she was acting under color of law. Galvin sought to dismiss count VI

(malicious prosecution) on the basis of section 2-619 of the Code. She alleged that she did not institute any judicial proceedings against plaintiff. Her participation in proceedings before the Committee was required by a subpoena issued by plaintiff's own attorneys. The action is also barred by the two-year statute of limitations, as the only act alleged on Galvin's part was her alleged concerted action with Bradley in April 1990 to bring disciplinary proceedings against plaintiff. Galvin sought to dismiss count VIII (intentional infliction of emotional harm) on the basis of section 2-619 of the Code. She alleged that the conduct complained of occurred more than two years prior to the filing of plaintiff's suit and is barred. Further, plaintiff's allegations do not rise to the level of what is required to sustain his claim. Galvin sought to dismiss count X (intentional interference with economic advantage) by alleging that plaintiff had failed to allege any communication by Galvin with the groups from whom he expected economic advantage and that there were no facts pleaded to support plaintiff's claim of loss. Galvin also sought to rely on the release executed by plaintiff as barring his claims against her.

[The preceding material is not to be published pursuant to Supreme Court Rule 23]

D. Trial Court Dismissal

On December 22, 1993, after hearing arguments of counsel and receiving extensive memoranda of law from all parties, the court issued a memorandum of decision, in which it dismissed all counts of the complaint without leave to reinstate. As to count 1, the court found that Schmalbeck was protected by absolute immunity for communications with the Committee. Even if absolute immunity were not to apply, he would be entitled to qualified immunity as the rights plaintiff claims were violated are not clearly established in the law. The court found that dismissal was warranted under both sections 2-615 and 2-619 of the Code. It noted that plaintiff had signed a release form which was valid and binding and that his allegations of coercion and extortion were without foundation.

As to count II, the court found its reasoning as to count I applied to this count also. The court found there were insufficient allegations to support plaintiff's theory that Bradley was acting under color of law and in concert with Schmalbeck.

(The discussion of the court's dismissal of counts III and IV is not to be published pursuant to Supreme Court Rule 23.)

[The following material is not to be published pursuant to Supreme Court Rule 23]

The court also dismissed count III, finding the alleged statements were time-barred. It also found privilege and inadequate pleading of facts to support a finding of conspiracy. As to those statements not time-barred, the court found a lack of specificity as to the facts of communication or republication of defamatory material. The court also relied on plaintiff's executed release and authorization.

Count IV was dismissed on the basis of section 2-619.1 of the Code, finding the statements time-barred, absolute privilege for communications made to the Committee, and the attorney-client privilege for statements made to Galvin's attorney.

[The preceding material is not to be published pursuant to Supreme Court Rule 23]

Court V was dismissed under section 2-615 of the Code, finding no facts to support a conspiracy or action by Galvin under color of law. Her statements were also privileged.

(The discussion of the court's reasoning in dismissing counts VI and VII and imposing sanctions is not to be published pursuant to Supreme Court Rule 23.)

[The following material is not to be published pursuant to Supreme Court Rule 23]

Count VI was dismissed, the court finding the statements time-barred and privileged. The court also stated the actions do not constitute a prosecution. Any actions not time-barred were subject to absolute privilege.

The court dismissed count VII, finding that the conduct complained of did not come close to the requirement of conduct

which is outrageous and beyond the bounds of human decency. In addition, many of the statements were privileged and/or time-barred.

Count VIII was also dismissed for the same reason as Count VII.

The count dismissed count IX, finding the count to be devoid of facts showing interference or lost opportunity. The alleged statements were also privileged.

Count X was dismissed on the same basis as count IX.

Count XI was also dismissed on the basis of the execution of authorization and release forms by plaintiff, which would preclude expunging. The allegations of coercion or criminal intimidation were found to be without merit.

Count XII was dismissed on the basis the statements are time-barred. The conspiracy claims contain no facts, but only conclusions and surmise.

E. Trial Court Sanctions

All defendants filed motions for sanctions, pursuant to Supreme Court Rule 137. They alleged there was no basis in law for the complaint; it was frivolous, made without reasonable cause and not in good faith, and the complaint was vexatious and brought for the purpose of harassing the defendants. In addition, Galvin alleged the motion to disqualify her attorneys was subject to sanctions. All attorneys filed affidavits and time records as to time spent in defending their clients.

Plaintiff filed a motion in response to the motions for sanctions, seeking to supplement the record with additional factual matter. This matter consisted of affidavits of plaintiff, transcripts of testimony of defendants, and those of third parties. By order entered on March 10, 1994, the court denied the motion, but allowed the factual matter to be included in the record. It also found that plaintiff's complaint was not filed in good faith and contained no good-faith argument for extension or modification of existing law. The order allowed sanctions against plaintiff in the

form of attorney fees and costs, setting a maximum hourly rate of $135 for fees.

At the hearing on sanctions, the court made the following observations in finding that sanctions were appropriate:

> "*** I have been concerned about this case from the moment it landed in my lap. I reviewed the complaint. When I saw the motions to dismiss and the memoranda in support of those motions and the opposing memorandum, I became more concerned. I will be frank. A great deal of my concern or some part of my concern was surprise at the position that [plaintiff's attorney] has continued to take in this case and that is because of my professional knowledge of [plaintiff's attorney], whom I have known, as opposed [to] the other counsel. I have known [plaintiff's attorney] for some[]time. He has not made a habit in my court of pursuing frivolous matters, of engaging in vexatious litigation. That has not been a problem I have experienced with [plaintiff's attorney] in any other case. But this case gravely disturbs me. It appears to me that at every step the plaintiff has been attempting to do nothing but strain immensely the boundaries of the law in an attempt to sidestep the obvious status of clear statements of law in this [S]tate with respect to each and every Count that was contained in this Complaint. I, too, like counsel for the defendants have many concerns that in the face of the memoranda supporting the motion to dismiss, this case didn't terminate. In my view that is when it should have ended. It continues to be my view at this point it should end. It may not. I don't have the power to make it end and shouldn't have the power to make it end. That is a decision the plaintiff has to make, as the whether or not the next step is approached. But it concerns me for the plaintiff and for counsel if this case continues on. It

concerns me for the defendants if they are continued to be put to expense in defending what appears to me to be nothing more than a suit by the plaintiff out of anger, out of misdirected rage, toward these defendants. The Court finds that there has been no real good[-]faith argument presented for reversal or extension of existing law with respect to the Counts that are contained in the original Complaint which the Court has stricken. And therefore, the request for sanctions will be allowed."

Plaintiff filed a motion objecting to the amount of fees requested by the various counsel, claiming excessive hours were claimed by counsel and objecting to an hourly rate in excess of $90. He also put forth objections to any sanction, stating there was no contention that his pleading was false, pointing out that he advanced authority for each aspect of his argument and asserting that an attorney should not be punished for innovation in zealous advocacy for his client.

On April 20, 1994, the trial court entered an order for sanctions as follows: Galvin's counsel $4,825.55, Bradley's and Schmalbeck's counsel $10,527.32, and Barry's counsel $11,519.89--for a grand total of $26,872.76.

[The preceding material is not to be published pursuant to Supreme Court Rule 23]

III. ANALYSIS

Plaintiff's brief on appeal sets forth the issues presented for review:

"I. WHETHER A LAW SCHOOL GRADUATE HAS CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS AND LIBERTY INTEREST IN HIS DEGREE, THE RIGHTS AND ENTITLEMENTS APPERTAINING TO THE DEGREE, HIS GOOD STANDING, AND THE INTEGRITY OF HIS STUDENT RECORD.

II. WHETHER THE DEFENSE OF QUALIFIED IMMUNITY IS APPLICABLE TO THE RESPECTIVE DEFENDANTS FOR DEPRIVATIONS OF THE CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS AND LIBERTY INTERESTS IMPLICATED TO THE DEGREE, THE RIGHTS AND ENTITLEMENTS THERETO APPERTAINING TO THE DEGREE, HIS GOOD STANDING, AND THE INTEGRITY OF HIS STUDENT RECORD.

III. WHETHER ABSOLUTE JUDICIAL PRIVILEGE IS A DEFENSE TO THE CONDUCT CONSTITUTING THE DEPRIVATION OF FEDERAL CONSTITUTIONAL RIGHTS OR FOR DEFAMATORY COMMUNICATIONS TO THE COMMITTEE ON CHARACTER AND FITNESS AND, IF SO, THE SCOPE AND EXTENT OF THE PRIVILEGE.

IV. WHETHER THE PRINCIPLES OF CONTINUING TORT APPLY TO THE TORTS OF DEFAMATION, INTENTIONAL INFLICTION OF EMOTIONAL HARM, INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AND MALICIOUS PROSECUTION.

V. WHETHER SUFFICIENT FACTS WERE ALLEGED ESTABLISHING CIVIL CONSPIRACY BETWEEN THE RESPECTIVE DEFENDANTS IN CONNECTION WITH THE STATE LAW TORT CLAIMS.

VI. WHETHER THE DEFENSES OF PRIVILEGE, IMMUNITY AND STATUE OF LIMITATIONS PROPERLY ARE RAISED PURSUANT TO A 2-615 MOTION AS OPPOSED TO A 2-619 MOTION.

VII. WHETHER THE RELEASE AND AUTHORIZATION REQUIRED BY THE STATE BOARD OF LAW EXAMINERS AND A CLEARANCE FORM REQUIRED BY THE UNIVERSITY OF ILLINOIS COLLEGE OF LAW CONSTITUTE ARE [sic] UNENFORCEABLE RELEASES, AND IF NOT, THE SCOPE AND EXTENT OF THE APPLICABILITY OF EACH.

VIII. WHETHER THE CONDUCT OF PLAINTIFF AND HIS ATTORNEY IN FILING THE COMPLAINT VIOLATED SUPREME COURT RULE 137 WARRANTING THE IMPOSITION OF SUBSTANTIAL SANCTION.

IX. WHETHER SANCTIONS FOR ATTORNEY'S FEES IN THE SUM OF $26,872.76 ARE EXCESSIVE.

X. WHETHER THE TRIAL COURT ERRED IN DISMISSING THE ENTIRETY OF THE ORIGINAL VERIFIED COMPLAINT WITHOUT LEAVE TO REINSTATE AND ABUSED ITS DISCRETION IN PREEMPTIVELY DENYING ANY OPPORTUNITY TO AMEND THE PLEADING." (Emphasis omitted.)

We determine that it is necessary to address only part of these issues.

A. Section 1983 of the Act

In seeking recovery under section 1983 of the Act, plaintiff attempts to equate the failure of the Dean to certify character and fitness with a deprivation of a constitutional or statutory right. Section 1983 of the Act provides in relevant part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, of immunities secured by the Constitution *** shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (42 U.S.C. §1983 (1988).)

There is a constitutional protection of the right to practice law if the national requirements of bar admission are met. (Rosenfeld v. Clark (D. Vt. 1984), 586 F. Supp. 1332, 1338, aff'd (1985), 760 F. 2d 253.) We find no authority or reason why section 1983 of the Act should extend to the investigative and recommendation process dictated by Illinois Supreme Court rules, Board of Examiners rules, and the Committee rules. In so ruling, we are aware that U of I College of Law officials are required to certify graduation data to the Board of Examiners. The certification material also includes reference to character and fitness. We also find the decision to certify character and fitness necessarily requires the use of discretion.

Section 1983 of the Act refers to "rights, privileges, or immunities secured by the Constitution." (42 U.S.C. §1983 (1988).) The right involved in this case was the right to practice law in Illinois. This right could only be granted or prohibited under the provisions of the rules of the supreme court of this

State. Those rules placed the determination of the right with the Board of Examiners and the Committee--not the U of I College of law administration or faculty. These bodies did, in fact, determine the issue and recommended the license be granted to plaintiff. Plaintiff was licensed. We will not extend liability under section 1983 of the Act to those who are giving recommendations. They are not acting under the color of law:

> "Misuse of power, possessed by virtue of [S]tate law and made possible only because the wrongdoer is clothed with the authority of [S]tate law, is action taken 'under color of' [S]tate law." (United States v. Classic (1941), 313 U.S. 299, 326, 85 L. Ed. 1368, 1383, 61 S. Ct. 1031, 1043.) (See also 15 Am. Jur. 2d Civil Rights §18 (1976).) We determine those giving references to fact finders are not intended to be included with those acting "under color of [S]tate law."

While we find that section 1983 of the Act does not apply to those furnishing recommendations to the Committee, we also recognize the necessity of absolute immunity. The reasons for absolute immunity that apply to the former employer in Kalish v. Illinois Education Association (1987), 157 Ill. App. 3d 969, 510 N.E.2d 1103, also apply to law school administrators and faculty. The practice of law often involves confidential and fiduciary relationships, in addition to honest acknowledgement of legal capabilities. Those entering the practice of law are justifiably screened, and screening necessarily requires recommendations. If those asked for opinions and those who have relevant information are to be faced with the expense and worry of legal actions, based upon libel, slander, or section 1983 of the Act, the ability to obtain a frank and candid evaluation will be seriously hampered. Absolute immunity must exist. In so ruling, we recognize the unique makeup of the Committee.

From our examination of plaintiff's complaint, Schmalbeck's actions only involved information going to the

Committee and, regardless of his official college position, there was only a status as supplier of information to the Committee. We find there was no conduct under the color of law and, in any case, there was absolute immunity as indicated by Kalish. Count I was properly dismissed. The same reasoning applies to count II, which was the section 1983 action against Bradley. There is no way it can be said that Galvin, a mere law student, was acting under color of law and count V, the 1983 action against Galvin, was properly dismissed.

(The remainder of the analysis is not to be published pursuant to Supreme Court Rule 23)

[The following material is not to be published pursuant to Supreme Court Rule 23]

B. Rules of Pleading and Statutes

On review of an order dismissing a complaint for failure to state a cause of action, all well-pleaded facts and inferences are accepted as true. Fellhauer v. City of Geneva (1991), 142 Ill. 2d 495, 499, 568 N.E.2d 870, 872.

Facts, and not legal conclusions, should be alleged in pleadings. Adkins v. Sarah Bush Lincoln Health Center (1989), 129 Ill. 2d 497, 519, 544 N.E.2d 733, 744; 30 Ill. L. & Prac. Pleadings §41 (1993); 735 ILCS 5/2-601 (West 1992).

C. Defamation--Limitations

Section 13-201 of the Code states:

> "Actions for slander, libel or for publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued." (735 ILCS 5/13/201 (West 1992).)

The complaint for defamation must clearly identify the specific defamatory statement. Heying v. Simonaitis (1984), 126 Ill. App. 3d 157, 163, 466 N.E.2d 1137, 1141.

D. Continuing Tort

In addition to the allegation of conspiracy, plaintiff argues "continuing tort" law can be used to tack on the first publication of the sexual harassment allegation, with the use of the allegation

before the Committee. It is recognized that generally every publication and every republication of defamation constitutes a separate cause of action (53 C.J.S. Libel & Slander §53, at 103 (1987); 33A Ill. L. & Prac. Slander & Libel §43 (1970)), and action should commence within one year of the time the action occurred.

Continuing tort usually has been recognized on a limited basis and one classic case is Leckrone v. City of Salem (1987), 152 Ill. App. 3d 126, 503 N.E.2d 1093. In Leckrone, there was continuous dumping of sewage into a stream. In medical malpractice, it has been used to avoid limitations or statutes of repose where there has been a period of an ongoing course of continuous negligent medical treatment. (Cunningham v. Huffman (1993), 154 Ill. 2d 398, 609 N.E.2d 321.) As stated in Hertel v. Sullivan (1994), 261 Ill. App. 3d 156, 161, 633 N.E.2d 36, 39, the Restatement suggests the discovery rule is a more direct method of addressing the problem. (Restatement (Second) of Torts §899, Comment e, at 444-45 (1979).) Here it is obvious the discovery rule, adequately coupled with the separate action requirement, gives plaintiff adequate protection. There is no reason, or cited authority, which would justify plaintiff's use of continuing tort in this case.

E. Defamation

All defamation actions "shall be commenced within one year next after the cause of action accrued." (735 ILCS 5/13-201 (West 1992).) The complaint must clearly identify the specific defamatory statement. (Heying, 126 Ill. App. 3d at 163, 466 N.E.2d at 1141.) Plaintiff makes reference to several allegations of defamation relating to the sexual harassment issue made more than one year prior to the filing of his complaint. This was true of counts naming Bradley, Galvin, and Barry as defendants. The limitations prohibit recovery on these alleged communications, regardless of plaintiff's attempt to include them under other theories of tort recovery.

F. Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress was first recognized in Illinois in Knierim v. Izzo (1961), 22 Ill. 2d 73, 174 N.E.2d 157, but was more adequately enunciated in McGrath v. Fahey (1988), 126 Ill. 2d 78, 533 N.E.2d 806. The requirements are conduct truly extreme and outrageous (the action must either intend that the conduct inflict sever emotional distress or knowledge that there is a high probability it will do so), and the conduct must in fact cause severe emotional distress. McGrath, 126 Ill. 2d at 86, 533 N.E.2d at 809.

The distress inflicted must be so severe that no reasonable person could be expected to endure it. It does not extend to "'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" (McGrath, 126 Ill, 2d at 86, 533 N.E.2d at 809 quoting Restatement (Second) of Torts §46, Comment d, at 73 (1965).) Very frequently, the alleged tortfeasor is one who "stood in a position of power or authority relative to the plaintiff." McGrath, 126 Ill. 2d at 87, 533 N.E.2d at 810.

We hold it would be improper to extend the limits of the tort to the facts alleged in plaintiff's complaint. As to positions of power of authority, perhaps Bradley might be within that classification. However, plaintiff needed not take law courses where Bradley was the instructor. Yet Bradley's influence, if any, with the Dean could be considered, in some measure, a position of power or authority. The alleged facts do not justify a finding that Galvin had "power of authority" over plaintiff.

For purposes of this opinion, we must assume that plaintiff's allegation are true, and that results in a necessary determination on our part that the sexual harassment charges by Galvin and Bradley were false. We conclude, however, that the result would lead to only one cause of action--that of defamation. The alleged facts are far less severe than those in McGrath or Knierim. We suggest that the practice of law will provide many more severe extreme and outrageous challenges to plaintiff's emotional makeup that the facts alleged in the present case. This

decision is consistent with that in Dymek v. Nyquist (1984), 128 Ill. App. 3d 859, 862, 469, N.E.2d 659, 662.

To equate the facts here with the tort of infliction of emotional distress would undermine the defamation limitations.

G. Tortious Interference With Economic Advantage

To prove the tort of interference with economic advantage in Illinois, the plaintiff must prove:

> "(1) his reasonable expectation of entering into a valid business relationship; (2) the defendant's knowledge of the plaintiff's is expectancy; (3) purposeful interference by the defendant that prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to the plaintiff resulting from such interference." Fellhauer, 142 Ill. 2d at 511, 568 N.E.2d at 878.

In addition, there must be allegation of interference with business relationship with specific third parties, and that the defendant acted toward a third party. Du Page Aviation Corp., Flight Services, Inc. v. Du Page Airport Authority (1992), 229 Ill. App. 3d 793, 803, 594 N.E.2d 1334, 1340-41.

Plaintiff's complaint was insufficient to state a cause of action of tortious interference.

We recognize the allegations of falsehoods which happened within the year before filing of the complaints were made to the Dean and to the Committee. The Committee apparently does not broadcast the proceedings and does not operate in a public forum. In plaintiff's case, the Committee ruled in his favor and he obtained his license. Perhaps the only dissemination of information which would interfere with plaintiff's economic abilities is the dissemination by this legal action.

H. Malicious Prosecution

We discuss, with malicious prosecution, the tort of abuse of process. Only malicious prosecution is mentioned under count IV of the issues presented for review. However, count VI of plaintiff's complaint refers to abuse of process. The elements of

malicious prosecution and abuse of process are listed in Holiday Magic, Inc. v. Scott (1972), 4 Ill. App. 3d 962, 966, 282 N.E.2d 452, 455, the former being stated as:

> "1. Institution and prosecution of judicial proceedings by the defendant.
>
> 2. Lack of probable cause for these proceedings.
>
> 3. Malice in instituting the proceedings.
>
> 4. Termination of the prior cause in plaintiff's favor.
>
> 5. Suffering by plaintiff of damage or injury from the prior proceeding."

Elements of abuse of process are:

> "1. Existence of an ulterior purpose or motive, and
>
> 2. Some act in the use of the legal process not proper in the regular prosecution of the proceedings." (Holiday Magic, 4 Ill. App. 3d at 962, 282 N.E.2d at 455.)

As to abuse of process, also see McGrew v. Heinold Commodities, Inc. (1986), 147 Ill. App. 3d 104, 111, 497 N.E.2d 424, 429-30. Both malicious prosecution and abuse of process relate to a judicial process. (See 25 Ill. L. & Prac. Malicious Prosecution §§1, 2 (1956); 30 Ill. L. & Prac. Process §7 (1993).) It is a wild imagination that links either with the alleged violations in this case. A minimum of research was necessary to determine the inapplicability. This type of pleading invites sanctions.

I. Civil Conspiracy

Plaintiff contends he has pleaded a conspiracy between Bradley and Galvin, which had as its purpose the deprivation of his right to practice law. Plaintiff alleges that he had a right to a good character recommendation from the U of I College of Law and the Bradley and Galvin were wrongfully attempting to deprive him of this right. A civil conspiracy is defined as follows:

> "A civil conspiracy giving rise to a cause of action in Illinois involves a combination of two or more persons

> for the purpose of accomplishing, through concerted action, either an illegal object or a legal object by an illegal means. [Citations.] The basis of the conspiracy is not the 'combination'; rather, it is the wrongful act alleged to have been done in pursuance of the agreement that may result in liability. [Citations.] The burden of proof in such cases always lies with the plaintiff to prove the conspiracy by clear and convincing evidence." Dymek, 128 Ill. App. 3d at 866, 469 N.E.2d at 665.

The conspiracy may be inferred if parties pursue the same object by common means, one performing one part and another performing another part. Forkin v. Cole (1989), 192 Ill. App. 3d 409, 427, 548 N.E.2d 795, 807.

The application of conspiracy to this case is difficult to comprehend. Plaintiff appears to argue conspiracy is shown and, thus, justifies a finding of adequacy of the State law tort claims. This also appears to be an attempt to avoid the statute of limitations applicable to defamation, as well as to absolute or qualified immunity. This conspiracy theory applied only to Bradley and Galvin.

We assume the "conspiracy" involved Galvin producing a false story of harassment and, subsequently, a written statement of the harassment. We assume Bradley's part in the conspiracy was repeating Galvin's harassment charge and ultimately making certain that it was brought to the attention of the Committee.

We find this an attempt to avoid the immunity issue and the defamation limitations, and we find no legal basis for the claim. Were we to recognize some type of conspiracy application, we would encroach upon the application of the limitations provision, without legislative involvement. Throwing such theories into the pleadings, without legal authority, is justification for sanctions.

To allow plaintiffs imaginative use of various theories of tort law to avoid the limitations for what is obviously a claim for defamation would virtually abolish limitations and absolute immunity. That we will not do.

J. Statute of Limitations, Privilege, Immunity, and Section 2-615 of the Code

Ordinarily, the statute of limitations is an affirmative defense which cannot be raised by a section 2-615 motion to strike. However, if it appears from the face of the complaint that the statute has run, then a motion to strike under section 2-615 of the Code is proper. Lissner v. Michael Reese Hospital & Medical Center (1989), 182, Ill. App. 3d 196, 206, 537 N.E.2d 1002, 1008.) The allegations in plaintiff's complaint and the attachment to the complaints clearly state some of the statements and memorandums were made in 1990. It is also established that the 1992 republication or repeats were made to the Committee. It was proper to use a section 2-615 motion to strike, based upon the statute of limitations and on absolute immunity. Both were evident from the pleading.

K. Injunctive Relief

We find no reason to order the Dean to destroy (or expunge) records of his office relating to this plaintiff. The allegations do not justify a finding that those records would be improperly published or circulated.

IV. CONCLUSION AS TO DISMISSAL OF THE COMPLAINT

We conclude plaintiff's complaint was properly dismissed. Once it is clear that continuing tort, intentional infliction of emotional distress, tortious interference with prospective economic advantage, malicious prosecution, abuse of process, and civil conspiracy are not properly pleaded, it is clear that this case revolves around defamation and whether immunity exists. The one year limitation for defamation actions is clear, and the complaint establishes the limitation applies to all statements and

publications made one year prior to April 29, 1993, the day the complaint was filed.

V. REFUSAL TO ALLOW AMENDMENTS

Whether to allow the plaintiff to amend his complaint is within the discretion of the trial court, and the test to determine whether the trial court properly exercised its discretion is "whether allowance of the amendment furthers the ends of justice." Ray Dancer, Inc. v. DMC Corp. (1992), 230 Ill. App. 3d 40, 48, 594 N.E.2d 1344, 1349; see also Kumaran v. Brotman (1993), 247 Ill. App. 3d 216, 224-25, 617 N.E.2d 191, 198.

The trial court decision was not an abuse of discretion. Justice would not be served by further proceedings.

VI. SANCTIONS

> The applicable portion of Supreme Court Rule 137 states: "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." 134 Ill. 2d R. 137.

Our court in Elledge v. Reichert (1993), 250 Ill. App. 3d 1055, 1059-60, 620 N.E.2d 543, 547, stated:

> "Rule 137 is penal in nature, and its provisions must be strictly construed. [Citations.] its purpose, like that of its predecessor, section 2-611 of the Code of Civil procedure (Ill. Rev. Stat. 1989, ch. 110, par. 2-611), is to prevent the filing of frivolous or false lawsuits without a legal or factual foundation [citations], not to penalize litigants and their attorneys simply because they were unsuccessful in the litigation. [Citations].
>
> The standard to be used in determining whether a violation has occurred is an objective standard of what was reasonable under the circumstances existing at the time of the filing. [Citations.] The decision whether to award fees rests in the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion."

We note plaintiff's and his attorney's objection to the fees and the alleged lack of opportunity to contest the fees. We also note the March 4, 1994, hearing on the motions for fees where attorney Stocks appears to have attempted to introduce additional exhibits and reargue the issue of dismissal of the complaint. This opinion has documented the plaintiff's attempt to use unavailable tort actions. Plaintiff argues in his brief that sanctions will chill zealous advocacy and destroy the efficiency of attorneys. Plaintiff also now attacks the fairness of the trial judge, suggesting that the trial court may have "harbored hostility toward the claim for invalid reasons." It appears there was full disclosure by the trial judge of any relevant information relating to bias. This was before trial court hearings. No objection was made at the trial level.

When inapplicable tort theories are included in a complaint, defense counsel must necessarily add extra hours of research and drafting. Zealous advocacy can be present, along with careful research and commonsense analysis of the law, without reckless pleading. The record in this case justifies the

trial court's conclusions and sanctions. While we might well be justified in adding additional sanctions as requested by defendant Galvin, we elect not to do so.

[The preceding material is not to be published pursuant to Supreme Court Rule 23]

VII. CONCLUSION

Affirmed.

KNECHT, P.J., and McCULLOUGH, J., concur.

IN THE CIRCUIT COURT
FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
CHAMPAIGN COUNTY, ILLINOIS

STEVEN R. ZIELINSKI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 93-L-607
	)	
RICHARD SCHMALBECK,	)	
GERARD V. BRADLEY,	)	
JEANNE E. GALVIN and	)	
ROBERT BARRY	)	
	)	
Defendants.	)	

MEMORANDUM OF DECISION

Schmalbeck's 2-615 and 2-619 Motions to Dismiss Count I

Count I of Plaintiff's complaint seeks recovery under 42 USC Section 1983. Defendants seeks dismissal under 2-615 on the theory of absolute or qualified immunity based on privilege and under 2-619 alleging the execution of a release by Plaintiff which allegedly authorizes the communication complained of.

Defendant's motions are well founded in each instance. The defendant is protected by absolute immunity for communication with the Character and Fitness Committee under the authority of Kalish v. Illinois Education Association as well as Starnes v. International Harvester Co.

Additionally, even should the Defendant not be entitled to absolute immunity for the alleged violations of rights guaranteed Plaintiff under the U.S. Constitution, he most certainly is entitled to qualified immunity under federal law for the damages alleged, as the rights Plaintiff alleges have been violated are by no means

clearly established in the law. The motion to dismiss under 2-615 is therefore allowed. The defendant's 2-619 motion should also be addressed. The Plaintiff in this cause executed a valid binding release and authorization for the compilation and transfer of the information complained of. Plaintiff's allegations of coercion and extortion are without foundation. The motion to dismiss with prejudice should be allowed.

Count I is dismissed without leave to reinstate.

Bradley's 2-615 and 2-619 Motions to dismiss Count II

Count II of Plaintiff's complaint seeks recovery under 42 USC Section 1983.
Defendant seeks dismissal under 2-615 on the theory of absolute or qualified immunity and alternatively on the theory that 1983 does not apply to Bradley as he was not acting under color of law. Additionally Bradley seeks dismissal under 2-619 on the theory of release and authorization.

The Court's holding with respect to Defendant Schmalbeck's Motions under 2-615 and 2-619 equally apply to Count II. This defendant, is immune from liability under the Kalish and Starnes holdings and under federal law would at the least enjoy qualified immunity due to the rights alleged not being clearly established in law. The release executed by Plaintiff also bars recovery against Bradley and therefore the 2-619 Motion to Dismiss is also well taken.

Bradley's alternative argument under 2-615 alleges inapplicability of Section 1983 due to his not having acted under color of law. Plaintiff's complaint alleges insufficient facts to establish any conspiratorial connection to Defendant Schmalbeck that would bring this defendant under Section 1983. Bradley can simply not be deemed to have acted under color of law based upon the allegations contained in this complaint. Therefore, dismissal under this theory would also be indicated.

Count II is dismissed without leave to reinstate.

Bradley's 2-615 and 2-619 motions to dismiss count III

Count III seeks recovery for defamation of Plaintiff. Defendant Bradley seeks dismissal under 2-615 on the basis of the one year statute of limitations, absolute privilege of the statements claimed or a claims that the statements were simply opinion and therefore not defamatory in nature. Defendant also seeks dismissal under 2-619 of those allegations concerning statements to the Character and Fitness Committee on the basis of release and authorization.

The statements alleged in paragraphs 5A, 5B and the pre April 29, 1992 statements alleged in paragraph 5E as well as statements attributable to the so called "civil conspiracy" in paragraph 6A are all time barred and therefore dismissed without leave to reinstate. Additionally the statements alleged in paragraph 6B and 6C as part of the "civil conspiracy" were privileged under the Kalish and Starnes rulings as previously cited and in any event the overall allegations of conspiracy are unsupported by any facts in the complaint and amount to mere conclusion.

While the allegations of paragraph 5C and post April 29 allegations of paragraph 5E are not time barred, the complaint lacks any specificity as to the facts of communication or republication in 5C and 5E and must therefore also be stricken.

Count III is dismissed without leave to reinstate under 2-615. Additionally, Defendant Bradley's 2-619 motion is well taken with respect that portion of the count complaining of statements to the Committee on Character and Fitness as Plaintiff had authorized such communication by virtue of execution of the release documentation.

Defendant Galvin's 2-619 Motion to Dismiss Count IV-Defamation

Defendant Galvin moves to dismiss count IV of Plaintiff's Complaint under 2-619 asserting the claim is time barred under

735 ILCS 5/13-201, that statements alleged to have made by Defendant to the Committee on Character and Fitness or to her attorney John Panegasser are subject to absolute privilege and finally that the conspiracy aspect of the Count must also fail due to the absolute privilege which attaches to the statements Plaintiff attributes to the conspiracy. Alternatively defendant Galvin seeks dismissal of the conspiracy allegations of Count IV pursuant to 2-615 due to Plaintiff's failure to plead any facts in support of conspiracy and the resulting conclusory nature of this aspect of the Count.

The Court need not address the 2-615 motion as this Count IV is clearly subject to dismissal under 2-619. Plaintiff's action with respect to the alleged statements of defendant in 1990 is barred by the Statue of Limitations. The alleged 1992 statements of this Defendant to the Committee on Character and Fitness are absolutely privileged under the crystal clear reasoning of the Court in Kalish. The alleged statements of Defendant to John Panegasser were clearly made in the context of an attorney-client relationship and are without question privileged. Lastly, the statements alleged in support of Plaintiff's conspiracy theory are themselves privileged under Kalish, therefore not actionable and not subject to cure by a grant of leave to replead.

Therefore the Defendant Galvin's Motion to Dismiss Count IV pursuant to 735 ILCS 5/2-619.1 is allowed and Count IV is dismissed without leave to reinstate.

Defendant Galvin's 2-615 Motion to Dismiss Count V-Deprivation of Rights

Count V seeks recovery under 42 USC Section 1983.

Defendant seeks dismissal under 2-615 on the theory that she was not acting under color of law inasmuch as she was a private individual. Plaintiff seeks avoidance of dismissal by alleging civil conspiracy between this defendant and Schmalbeck and/or Bradley. Plaintiff however alleges not even the barest of facts to support the

conspiracy theory. Galvin was clearly a private individual at the time of the alleged statements or actions and therefore her motion to dismiss with prejudice is well taken. Additionally many of the statements alleged were subject to privilege under the Kalish and Starnes cases hereinbefore cited.
Count V is dismissed without leave to reinstate.

Defendant Galvin's 2-619 Motion to Dismiss Count VI-Malicious Prosecution/Abuse of Process and Defendant Bradley's 2-615 Motion to Dismiss Count IV

Plaintiff's Count VI seeks recovery against Bradley and Galvin for Malicious Prosecution/Abuse of Process. Defendants seeks dismissal on the basis that the actions complained of are time barred, privileged communications or do not constitute a "prosecution" in any event. Defendants are correct with respect to the statute of limitations defense as well as their argument of privilege and immunity. The bulk of the actions complained of are indeed barred under the two year statute of limitations. This is particularly true of the actions and statements attributed to Defendant Galvin by Plaintiff. Any actions of Galvin which are not time barred were most certainly privileged communication to the Committee on Character and Fitness. Galvin's Motion to Dismiss is well taken and is allowed without leave to reinstate.

Defendant Bradley also raises the statute of limitations and absolute privilege as a basis for dismissal of Count VI as it relates to him. For the same reasons as stated above, Bradley's Motion to Dismiss is well taken. The actions or statements attributed to him by Plaintiff are in each instance either time barred or subject to absolute privilege under Kalish and Starnes.

Count VI is dismissed without leave to reinstate.

Defendant Bradley's 2-615 Motion to Dismiss Count VII-Intentional Infliction of Emotional Harm

Count VII seeks recovery against Defendant Bradley for

Intentional Infliction of Emotional Harm. Bradley seeks dismissal under 2-615 on the basis that the alleged actions of Defendant do not constitute an intentional infliction of emotional harm as a matter of law and/or that many of the statements or actions complained of are subject to absolute immunity due to their having been made to the Committee on Character and Fitness. While not raised by Defendant with respect to this particular Count, the Court also notes that many of the statements or actions complained of are subject to attack under the two year statute of limitations as alleged by Defendant Galvin in relation to Count VIII.

The Illinois Supreme Court in Public Finance Corp. V. Davis, 66 Ill.2d 85 clearly set out the requirements for establishment of the tort of intentional infliction of emotional distress. The conduct complained of must be clearly outrageous and beyond the bounds of human decency to be actionable. The conduct complained of in this Count do not come close to rising to this level. As a matter of law, the allegations against Defendant Bradley do not constitute the tort of intentional infliction of emotional harm and the Count should be dismissed on this basis. Additionally, many of the actions and statement attributed to the Defendant are privileged and subject to absolute immunity as having been made to the Committee on Character and Fitness, Kalish and Starnes. As a further note, many of the statements attributed to Bradley are alleged to have occurred more than two years before the filing of Plaintiff's complaint and are therefore time barred in any event.

Count VII is dismissed without leave to reinstate.

Defendant Galvin's 2-619 Motion to Dismiss Count VIII-Intentional Infliction of Emotional Harm

Count VIII seeks recovery against Defendant Galvin for intentional infliction of emotional harm. Defendant seeks dismissal under 2-619 claiming the two year statue of limitations as a bar and alternatively seeks a finding that as a matter of law the conduct complained of does not constitute commission of the named tort and finally claims privilege as a supplement to the statute of

limitations with respect to Plaintiff's "continuing tort" claims. For the reasons stated with respect to Count VII, this Count VIII must also be dismissed. The conduct complained of does not as a matter of law rise to the level of an extreme and outrageous nature beyond the bounds of human decency. The conduct is neither extreme nor outrageous. Additionally, most if not all of the conduct complained of with respect to Galvin is barred by the two year statute of limitations or is privileged and subject to absolute immunity as hereinbefore outlined.

Count VIII is dismissed without leave to reinstate.

Defendant Bradley's 2-615 Motion to Dismiss count IX-Intentional Interference with Prospective Economic Advantage

Count IX seeks recovery against Defendant Bradley for Intentional Interference with Prospective Economic Advantage. Defendant seeks dismissal under 2-615 for failure to state a cause of action claiming the Count lacks factual allegations necessary to establishment of the named tort. Plaintiff's Count IX is devoid of any facts. It is replete with conclusion but fails to allege how the defendant interfered with any named person or group to the detriment of Plaintiff and in fact names not a single opportunity lost to the Plaintiff. While the Count may well sufficiently plead knowledge by this defendant of Plaintiff's economic goals, no facts are pled which point to any interference by defendant and no facts are pled which sustain any claim of lost opportunity or employment. Defendant's Motion to Dismiss on this basis is well taken and should be allowed. Additionally the statements or actions attributed to this Defendant appear to relate to the alleged statements to the Committee on Character and Fitness. As previously ruled, these statements are privileged and subject to immunity. The theory of Plaintiff's complaint is repeatedly tied to the supposed actions of the Defendant in response to the Committee.

Count IX is dismissed without leave to reinstate.

Defendant Galvin's 2-615 Motion to Dismiss Count X-Intentional Interference with Prospective Economic Advantage

Count X is basically a restatement of Count IX but naming Galvin as the Defendant. The Court's reasoning on the dismissal of Count IX applies equally to Count X. The Count is devoid of factual allegation and is even more vague with respect to the necessary allegation of knowledge by the defendant of plaintiff's expectancy of economic advantage from any particular entity.

Count X is dismissed without leave to reinstate.

Defendant Schmalbeck's or successor's 2-615 and 2-619 Motions to Dismiss Count XI-Injunctive Relief

Count XI seeks injunctive relief against the Dean of the University of Illinois Law School and specifically expungement of certain documentation alleged to be in possession of the Dean or Law School. The 2-619 Motion of the Defendant is determinative of this Count. The Plaintiff voluntarily executed authorization and release forms seeking compilation and dissemination of the very information he now complains of. Plaintiff's assertions of coercion and criminal intimidation are wholly without merit. Expungement is not warranted and is precluded by the release and authorization executed by Plaintiff. Defendant's 2-619 Motion is well taken and should be allowed.

Count XI is dismissed without leave to reinstate.

Defendant Robert Barry's Motion to Dismiss Count XII-Defamation

Defendant Robert Barry move to dismiss Count XII of the Complaint pursuant to 735 ILCS 5/2-615, for failure to state a claim. Defendant asserts Plaintiff's action is time barred pursuant to 735 ILCS 5/13-201 and that Plaintiff's claim based on Defendant's alleged statements to the Committee on Character and Fitness must fail due to the existence of absolute privilege.

Finally, Defendant seeks dismissal of that part of the Count based on civil conspiracy and continuing tort again claiming absolute privilege of the statements attributed to the conspiracy and that the allegations of conspiracy are wholly conclusory.

Plaintiff responds that Defendant Barry's motion should fail on procedural grounds as being improperly brought under 2-615 as opposed to 2-619 and that in any event the theory of "continuing tort" should save this count from operation of the statue of limitations and that no privilege exists in communications with the Committee on Character and Fitness.

Plaintiff's procedural objection to the motion being brought under 2-615 as opposed to 2-619 is unfounded and is denied. The motion under 2-615 is indeed a proper approach with respect to this cause as the Court finds that clearly from the face of the complaint as a matter of law the cause of action is time barred pursuant to 735 ILCS 5/13-201. Additionally the Court finds Defendant's claim of absolute privilege of statements made to the committee on Character and fitness is correct and that as a clear matter of law such statements are not actionable in defamation. Kalish v. Illinois Education Association, 157 Ill. App. ed 969, 510 N.E. 2d (1987). With respect to Plaintiff's attempt to present a conspiracy claim in Count XII, he had presented no facts, but only surmise and conclusion. No particular facts or circumstances are alleged which can support such a claim and in fact the statements of Bradley attributable to this Defendant were also privileged and therefore cannot constitute grounds to support a theory of civil conspiracy which obviates the propriety of Plaintiff being allowed to plead over. Therefore the Court finds the Defendant's Motion to Dismiss Count XII with prejudice is well taken and should be allowed.

Count XII is dismissed and stricken without leave to reinstate.

In light of the Court's ruling on each of the Counts, the Motion to Quash Subpoena Seeking To Compel Document Production and Motion to Quash Subpoena for Discovery Deposition of Hurshal C. Tummelson are each allowed.

The Clerk of the Court will forward a copy of this order to all counsel or record.

ENTER 12/22/93

/s/ Dan L. Flannell
CIRCUIT JUDGE

STATE OF ILLINOIS)
)
COUNTY OF CHAMPAIGN)

IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

STEVEN R. ZIELINSKI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 93 L 607
	)	
RICHARD SCHMALBECK,	)	
GERARD V. BRADLEY,	)	
JEANNE E. GALVIN and	)	
ROBERT BARRY,	)	
	)	
Defendants.	)	

ORDER

This cause coming on for hearing on Motions for Sanctions filed by the Defendants, RICHARD SCHMALBECK, GERARD V. BRADLEY, JEANNE E. GALVIN and ROBERT BARRY and the Court having heard the arguments of counsel in support of and in opposition to said Motions.

THE COURT FINDS as follows:

1. The Complaint of the Plaintiff was not filed in good faith and contained no good faith argument for extension or modification of existing law;

2. Other findings by the Court set forth on the record are incorporated herein;

3. Sanctions against Plaintiff in the form of attorney fees and costs will be allowed in the amounts subsequently determined by the Court and the Motions for Sanctions should be granted in

the amounts subsequently determined by the Court;

4. That $135.00 per hour is the maximum hourly rate for attorney fees that this Court will allow and is a reasonable fee for legal services in and around Champaign County, Illinois.

IT IS THEREFORE ORDERED as follows:

1. That the findings of the Court set forth above and set forth on the record of the March 4, 1994 hearing on Motions for Sanctions are incorporated herein;

2. That the request by Plaintiff to file in open Court the Additional Factual Matter in Response to Motion for Sanctions is denied and Plaintiff will not be allowed to file said document and said document will not be received by the Court;

3. That the Offer of Proof made by Plaintiff for admission of said Additional Factual Matter in Response to Motion for Sanctions is denied but is accepted for purposes of the record;

4. That counsel for Defendants shall resubmit or supplement their Affidavits attached to their respective Motions for Sanctions based upon the maximum hourly rate set forth above and to further indicate the amount of time or hours incurred by attorneys and/or by paralegals or other non-attorneys;

5. The amount of attorney fees to be awarded or assessed is hereby taken under advisement by this Court for ruling at a later date.

/s/ Dan L. Flannell
JUDGE

3/10/94
DATE

CALUWAERT, PANEGASSER & HANCOCK
John Panegasser
Attorney for Jeanne E. Galvin
579 West North Avenue
Elmhurst, Illinois 60126
(708) 279-6800

IN THE CIRCUIT COURT
FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
CHAMPAIGN COUNTY, URBANA, ILLINOIS

STEVEN R. ZIELINSKI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 93 L 607
	)	
RICHARD SCHMALBECK,	)	
GERARD V. BRADLEY,	)	
JEANNE E. GALVIN and	)	
ROBERT BARRY,	)	
	)	
Defendants.	)	

ORDER FOR SANCTIONS

This cause coming on for hearing on the Motions for Sanctions filed by the Defendants, Richard Schmalbeck, Gerard Bradley, Jeanne Galvin and Robert Barry, and the Court having previously entered an order finding that the Plaintiff's Complaint was not filed in good faith and finding that sanctions against the Plaintiff for Defendants' attorney's fees and costs should be allowed, and the Court having had the opportunity to review the supplemental affidavits and/or summaries of attorney's fees and expenses submitted by Defendants at the Court's request, and the Court having considered Plaintiff's objection to the requested attorney's fees, oral arguments on said objections having been waived, and the Court further finding that the attorney's fees requested by each of the Defendants are reasonable in light of the complexity of the issues presented by Plaintiff's frivolous Complaint, it is therefore ordered that the Plaintiff, Steven R. Zielinski, and his counsel, Jerrold H. Stocks, pay attorney's fees

and expenses as follows:

To Defendants Schmalbeck and Bradley, attorney's fees of $10,336.50, paralegal services of $84.00, law clerk services of $30.00, expenses of $76.82, for a total of $10,527.32.

To Defendant Jeanne Galvin, attorney's fees of $4,737.50, expenses of $88.05, for a total of $4,825.55.

To Defendant Robert Barry, legal fees of $10,698.75, expenses of $821.14, for a total of $11,519.89.

ENTERED this 20th day of April, 1994.

/s/ Dan L. Flannell
Dan L. Flannell
Circuit Judge